

# Exhibit A

EXECUTIVE ORDER NO. 8-15

**PUBLIC WORKS PROJECT LABOR AGREEMENTS**

WHEREAS, the City of Philadelphia (“City”) has a compelling interest in awarding building or construction work contracts so as to yield the lowest reasonable costs and the highest standard of quality and efficiency; and

WHEREAS, Project Labor Agreements can ensure that a building or construction work project is completed at the lowest reasonable cost; by the highest quality and most professional work force; and in a timely manner without labor disruptions such as strikes, lockouts or slowdowns; and

WHEREAS, Project Labor Agreements can provide opportunities for the City, contractors and labor organizations to make progress in meeting their respective goals for worker diversity and local employment;

WHEREAS, the City has been a party to Project Labor Agreements pursuant to Executive Orders No. 5-95 and No. 15-11, and has gained useful insight into when Project Labor Agreements are most appropriate and beneficial to the City;

WHEREAS, the City has determined that certain projects, because of their size, complexity, need for a variety of craft labor and critical deadlines are generally appropriate for Project Labor Agreements; and

WHEREAS, guidance to City departments and agencies on the use of Project Labor Agreements benefits the interests of the City:

WHEREAS, an Advisory Committee can provide continuing guidance on the use and form of Project Labor Agreements;

NOW, THEREFORE, by the powers vested in me by the Philadelphia Home Rule Charter, it is hereby ORDERED:

**SECTION 1. Definitions.**

- (a) Appropriate Labor Organization. An organization representing, for purposes of collective bargaining, journeymen in one or more crafts or trades with a Federal or state certified approved apprenticeship training program and which:
  - (i) has entered into a labor agreement with an employer in the building and construction industry;
  - (ii) has represented journeymen, mechanics and apprentices employed

on projects similar to the project for which a Project Labor Agreement is being considered;

- (iii) possesses the present ability to refer, provide or represent qualified journeymen and apprentices in the crafts or trades required by the project, in sufficient numbers to perform the contracted work involved in the project; and
  - (iv) has identified member diversity as an organizational value and has established objectives for maintaining and increasing diversity among its apprentice and journeyman members.
- (b) City Agency. A City office, department, board, commission or other entity which procures goods and services directly or through the City Procurement Department.
- (c) Project(s). This Executive Order shall apply to building or construction work, including maintenance and service projects which include substantial building improvements under a contract with the City governed by Section 17-107 of The Philadelphia Code.
- (d) Project Labor Agreement. A collective bargaining agreement between a contractor as an employer and an Appropriate Labor Organization relating to the building or construction work performed at a particular site ("Project"). Such an agreement sets forth the terms and conditions of employment for workers hired by the employer and sets forth certain work rules, no-strike clauses, jurisdictional determinations and other project-specific provisions that the City, the employer or the Labor Organization deem important for the completion of the project. Any Project Labor Agreement shall be subject to the review and approval of the City's Law Department.

## **SECTION 2. Public Works Project Review.**

- (a) Each City Agency shall review all proposed Projects, with an estimated construction cost of Three Million Dollars (\$3,000,000.00) or more to determine if a particular Project would be appropriate for a Project Labor Agreement. Projects with lower estimated costs may also be appropriate for Project Labor Agreements, and City Agencies are encouraged to review Projects with lower construction costs. Appropriate Projects include the following characteristics:
- i. Projects that have high anticipated construction costs;
  - ii. Projects that require the labor of multiple construction crafts or trades;

- iii. Projects that have complex labor requirements that may conflict with existing collective bargaining agreements;
  - iv. Projects that require completion without delay
  - v. Projects that further urgent City goals and
  - vi. Projects being performed in complex work environments or for which the provisions of Section 5 are required.
- (b) All Projects with estimated construction budgets of Three Million Dollars (\$3,000,000.00) or more shall be reviewed by City Agencies prior to issuing an invitation for bids. PLA's should be used when any of the criteria under Section 2(a) are met, unless clear countervailing considerations are present. City Agencies shall forward the findings of the Project review to the Mayor's Office.

**SECTION 3. Referral for Project Labor Agreements.**

- (a) When a City Agency has determined that a Project is appropriate for a Project Labor Agreement, the City Agency shall provide the Mayor's Office with a written description of the Project and the City Agency's recommendation for a Project Labor Agreement.
- (b) The recommendation of the appropriateness and feasibility of using a Project Labor Agreement for a particular project shall describe how it will benefit and enhance the interests of the City on the basis of costs, efficiency, quality, safety and/or timeliness, and shall specifically address the following factors;
  - (i) The need for safe, timely and efficient completion of the project;
  - (ii) The need for predictable costs and enforcement of prevailing wage requirements;
  - (iii) The need for effective mechanisms for resolution of disputes;
  - (iv) The need for a ready and adequate supply of highly skilled and highly trained craft workers and the need to guarantee performance of the project in a workmanlike and professional manner; and
  - (v) The opportunity to provide significant employment opportunities for qualified City residents, including minority males and women, and for women- and minority-owned businesses.



- (c) This Executive Order does not require the use of a Project Labor Agreement with respect to any particular Project, nor does this Executive Order require the selection of any particular union, trade council or labor organization.

#### **SECTION 4. Determination for Project Labor Agreement.**

- (a) The Mayor's Office shall review all submittals required for Projects.
  - (i) Whether a Project Labor Agreement has been recommended or not, the Project shall be reviewed for consistency with this Executive Order.
- (b) When the Mayor's Office determines that a Project Labor Agreement is appropriate, it shall, in consultation with the City Agency, commence a discussion with labor organizations to determine
  - (i) which labor organization(s) may be appropriate for the Project, and
  - (ii) if a Project Labor Agreement is feasible for the Project.
- (c) Where the Mayor's Office determines that a Project Labor Agreement will benefit from monitoring of the opportunities provided for qualified City residents, minorities and women, the Office of Economic Opportunity shall provide such monitoring services and report results to the Mayor's Office on a periodic basis, but not less than yearly.

#### **SECTION 5. Required Provisions In Project Labor Agreements.**

Any Project Labor Agreement entered into pursuant to this Executive Order shall:

- (a) Contain guarantees against strikes, lockouts, slowdowns and similar actions;
- (b) Set forth effective, immediate and mutually binding procedures for resolving jurisdictional disputes arising before the completion of the work;
- (c) Contain guarantees for the availability of labor for the Project;
- (d) Require the participating labor organizations to make available at the time of bidding for the Project all collective bargaining agreements and current wage rates applicable to the work;
- (e) Include diversity goals for appropriate labor organizations and contractors and requirements for annual reporting by participating labor organizations on their efforts and progress toward increasing diversity; and

- (e) Require participating labor organizations and contractors to cooperate with the City's Office of Economic Opportunity on providing information on economic opportunity plans and other diversity issues

#### **SECTION 6. Procedures When Project Labor Agreements Are Used.**

If a Project Labor Agreement is used pursuant to this Executive Order for any Project, the procedures listed in this section shall be followed:

- (a) A Project Labor Agreement shall be made part of the bid specifications in substantially the form attached hereto as the "Philadelphia Public Projects Labor Agreement," or such other form of agreement that the City Solicitor may approve.
- (b) The Instructions to Bidders shall provide that the City, the Project manager and any contractor shall have the absolute right to select any qualified bidder for the award of project contracts without reference to whether the bidder was unionized, provided, however, that only a bidder willing to execute and comply with the Project Labor Agreement would be designated the successful bidder;
- (c) The Instructions to Bidders shall provide that the Project Labor Agreement shall be made binding on all contractors and subcontractors on the Project through inclusion of appropriate bid specifications in all relevant bid documents;
- (d) Following the award of the contract for the Project, the Project Labor Agreement shall be finalized and executed by the contractor or its project manager, subject to the review and approval of the City; and
- (e) The Project contract and the Project Labor Agreement shall comply with all other provisions of law.

#### **SECTION 7. Advisory Committee for Project Labor Agreements.**

- (a) An Advisory Committee for Project Labor Agreements is hereby established. The Advisory Committee shall consist of the following City officials or their designees:

Mayor's Chief of Staff  
City Solicitor  
Managing Director  
Director of Finance  
Deputy Mayor for Transportation and Utilities  
Deputy Mayor for Economic Development

Other City officials, employees or private citizens may serve on the Advisory Committee at the request of the Mayor's Chief of Staff.

(b) Duties. The Advisory Committee shall:

- (i) Monitor and evaluate Project Labor Agreements entered into pursuant to this Executive Order, , and review reports from City departments and participating labor organizations on the use of the agreement provisions in Section 5 in meeting the objectives of this Executive Order, including but not limited to, avoiding labor unrest, providing skilled high quality labor, and meeting the diversity goals agreed to by the participating Unions. If reports from Unions are not provided to the City, the Advisory Committee may recommend that the use of Project Labor Agreements be suspended by the City until such time as reports are received and can be evaluated;
- (ii) Make periodic recommendations to the Mayor regarding the use of Project Labor Agreements , including recommendations for modifications of the terms and conditions of Project Labor Agreements, changes to the policies established herein for their use, and the expansion, limitation, suspension or termination of their use; and
- (iii) Perform such other duties as the Mayor may from time to time assign.

#### **SECTION 8. Prior Order Rescinded.**

Executive Order No. 15-11 is hereby rescinded.

#### **SECTION 9. Effective Date.**

This Executive Order shall take effect immediately.

12/31/15  
Date

  
Michael A. Nutter, Mayor

# Exhibit B



**EXECUTIVE ORDER No. 15-11**

**PUBLIC WORKS PROJECT LABOR AGREEMENTS**

WHEREAS, the City of Philadelphia (“City”) has a compelling interest in awarding building or construction work contracts so as to yield the lowest reasonable costs and the highest standard of quality and efficiency; and

WHEREAS, Project Labor Agreements can ensure that a building or construction work project is completed at the lowest reasonable cost; by the highest quality and most professional work force; and in a timely manner without labor disruptions such as strikes, lockouts or slowdowns; and

WHEREAS, Project Labor Agreements can provide opportunities for the City, contractors and labor organizations to make progress in meeting their respective goals for worker diversity and local employment;

WHEREAS, the City has been a party to several Project Labor Agreements pursuant to Executive Order No. 5-95 and has gained useful insight into when Project Labor Agreements are most appropriate and beneficial to the City;

WHEREAS, the City has determined that certain projects, because of their size, complexity, need for a variety of craft labor and critical deadlines are generally appropriate for Project Labor Agreements; and

WHEREAS, guidance to City departments and agencies on the use of Project Labor Agreements benefits the interests of the City:

WHEREAS, an Advisory Committee can provide continuing guidance on the use and form of Project Labor Agreements;

NOW, THEREFORE, by the powers vested in me by the Philadelphia Home Rule Charter, it is hereby ORDERED:

**SECTION 1. Definitions.**

- (a) Appropriate Labor Organization. An organization representing, for purposes of collective bargaining, journeymen in one or more crafts or trades with a Federal or state certified approved apprenticeship training program and which:
  - (i) has entered into a labor agreement with an employer in the building and construction industry;
  - (ii) has represented journeymen, mechanics and apprentices employed

on projects similar to the project for which a Project Labor Agreement is being considered;

- (iii) possesses the present ability to refer, provide or represent qualified journeymen and apprentices in the crafts or trades required by the project, in sufficient numbers to perform the contracted work involved in the project; and
  - (iv) has identified member diversity as an organizational value and has established objectives for maintaining and increasing diversity among its apprentice and journeyman members.
- (b) City Agency. A City office, department, board, commission or other entity which procures goods and services directly or through the City Procurement Department.
  - (c) Project(s). This Executive Order shall apply to building or construction work under a contract with the City governed by Section 17-107 of The Philadelphia Code.
  - (d) Project Labor Agreement. A collective bargaining agreement between a contractor as an employer and an Appropriate Labor Organization relating to the building or construction work performed at a particular site ("Project"). Such an agreement sets forth the terms and conditions of employment for workers hired by the employer and sets forth certain work rules, no-strike clauses, jurisdictional determinations and other project-specific provisions that the City, the employer or the Labor Organization deem important for the completion of the project. Any Project Labor Agreement shall be subject to the review and approval of the City's Law Department.

## **SECTION 2. Public Works Project Review.**

- (a) Each City Agency shall review all proposed Projects with an estimated construction cost of Five Million Dollars (\$5,000,000) or more to determine if a particular Project would be appropriate for a Project Labor Agreement. Projects with lower estimated costs may also be appropriate for Project Labor Agreements, and City Agencies are encouraged to review Projects with lower construction costs. Appropriate Projects include the following characteristics:
  - (i) Projects that have high anticipated construction costs;
  - (ii) Projects that require the labor of multiple construction crafts or trades;

- (iii) Projects that have complex labor requirements that may conflict with existing collective bargaining agreements;
  - (iv) Projects that require completion without delay; and
  - (v) Projects that further urgent City goals.
- (b) All Projects with estimated construction budgets of Five Million Dollars (\$5,000,000) or more shall be reviewed by City Agencies prior to issuing an invitation for bids. PLA's should be used when any of the criteria under Section 2(a) are met, unless clear countervailing considerations are present. City Agencies shall forward the findings of the Project review to the Mayor's Office.

**SECTION 3. Referral for Project Labor Agreements.**

- (a) When a City Agency has determined that a Project is appropriate for a Project Labor Agreement, the City Agency shall provide the Mayor's Office with a written description of the Project and the City Agency's recommendation for a Project Labor Agreement.
- (b) The recommendation of the appropriateness and feasibility of using a Project Labor Agreement for a particular project shall describe how it will benefit and enhance the interests of the City on the basis of costs, efficiency, quality, safety and/or timeliness, and shall specifically address the following factors:
  - (i) The need for safe, timely and efficient completion of the project;
  - (ii) The need for predictable costs and enforcement of prevailing wage requirements;
  - (iii) The need for effective mechanisms for resolution of disputes;
  - (iv) The need for a ready and adequate supply of highly skilled and highly trained craft workers and the need to guarantee performance of the project in a workmanlike and professional manner; and
  - (v) The opportunity to provide significant employment opportunities for qualified City residents, including minority males and women, and for women- and minority-owned businesses.
- (c) This Executive Order does not require the use of a Project Labor Agreement with respect to any particular Project, nor does this Executive Order require the selection of any particular union, trade council or labor organization.

**SECTION 4. Determination for Project Labor Agreement.**

- (a) The Mayor's Office shall review all submittals required for Projects.
  - (i) Whether a Project Labor Agreement has been recommended or not, the Project shall be reviewed for consistency with this Executive Order.
- (b) When the Mayor's Office determines that a Project Labor Agreement is appropriate, it shall, in consultation with the City Agency, commence a discussion with labor organizations to determine
  - (i) which labor organization(s) may be appropriate for the Project, and
  - (ii) if a Project Labor Agreement is feasible for the Project.
- (c) The Mayor's Office may determine that a Project Labor Agreement will benefit from third party monitoring of the opportunities provided for qualified City residents, minorities and women. If so determined, the Mayor's Office will direct the Office of Economic Opportunity to select and contract with a qualified monitor ("Monitor").
  - (i) If a Monitor is engaged for the Project, the cost shall be shared by the City, contractor(s) and the Appropriate Labor Organizations

**SECTION 5. Required Provisions In Project Labor Agreements.**

Any Project Labor Agreement entered into pursuant to this Executive Order shall:

- (a) Contain guarantees against strikes, lockouts, slowdowns and similar actions;
- (b) Set forth effective, immediate and mutually binding procedures for resolving jurisdictional disputes arising before the completion of the work; and
- (c) Include diversity goals for appropriate labor organizations and contractors.

**SECTION 6. Procedures When Project Labor Agreements Are Used.**

If a Project Labor Agreement is used pursuant to this Executive Order for any Project, the procedures listed in this section shall be followed:

- (a) A Project Labor Agreement shall be made part of the bid specifications in substantially the form attached hereto as the "Philadelphia Public Projects



Labor Agreement,” or such other form of agreement that the City Solicitor may approve.

- (b) The Instructions to Bidders shall provide that the City, the Project manager and any contractor shall have the absolute right to select any qualified bidder for the award of project contracts without reference to whether the bidder was unionized, provided, however, that only a bidder willing to execute and comply with the Project Labor Agreement would be designated the successful bidder;
- (c) The Instructions to Bidders shall provide that the Project Labor Agreement shall be made binding on all contractors and subcontractors on the Project through inclusion of appropriate bid specifications in all relevant bid documents;
- (d) Following the award of the contract for the Project, the Project Labor Agreement shall be finalized and executed by the contractor or its project manager, subject to the review and approval of the City; and
- (e) The Project contract and the Project Labor Agreement shall comply with all other provisions of law.

**SECTION 7. Advisory Committee for Project Labor Agreements.**

- (a) An Advisory Committee for Project Labor Agreements is hereby established. The Advisory Committee shall consist of the following City officials or their designees:

Mayor’s Chief of Staff  
City Solicitor  
Managing Director  
Director of Finance  
Deputy Mayor for Transportation and Utilities  
Deputy Mayor for Economic Development

Other City officials, employees or private citizens may serve on the Advisory Committee at the request of the Mayor’s Chief of Staff.

- (b) Duties. The Advisory Committee shall:
  - (i) Monitor and evaluate Project Labor Agreements entered into pursuant to this Executive Order;
  - (ii) Make periodic evaluations to the Mayor regarding the use of Project Labor Agreements, including recommendations for modifications of Project Labor Agreements;

- (iii) Perform such other duties as the Mayor may from time to time assign.


**SECTION 8. Prior Order Rescinded.**

Executive Order No. 5-95 is hereby rescinded.

**SECTION 9. Effective Date.**

This Executive Order shall take effect immediately.

11/29/11  
Date

  
Michael A. Nutter, Mayor

## PHILADELPHIA PUBLIC PROJECTS LABOR AGREEMENT

THIS CITY OF PHILADELPHIA PUBLIC PROJECT LABOR AGREEMENT (hereinafter the “Agreement”), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between

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(hereinafter the “Signatory Contractors”), their successors or assigns, and the Affiliates of the Philadelphia Building and Construction Trades Council pursuant to, and in accordance with, the Mayor’s Executive Order No. 15-11 with respect to the public works project of and within the City of Philadelphia (“City”) or City-owned facilities, described in Article II, Section 2 of this Agreement, and referred to herein as the “Public Works Project.”

**WHEREAS** the parties to this Agreement acknowledge that the timely construction of City projects is critical to the City and its residents; and

**WHEREAS** the City and its contractors, reflecting the objectives of the City, desire to provide for the efficient, safe, quality and timely completion of projects in a manner designed to afford the lowest reasonable cost to the City and the public it represents, and to achieve the advancement of public policy objectives; and

**WHEREAS** this Agreement will foster the achievement of those goals by, among other things, avoiding the costly delays of disruption or interference with work and promote labor harmony and peace; and

**WHEREAS** this Agreement will further the policy objectives of the City, its contractors and the Union(s) to include employment opportunities for minorities, women, Philadelphia residents and the economically disadvantaged in the construction industry; and

**WHEREAS** the Union(s) have demonstrated a commitment to the expansion of such employment opportunities; and

**WHEREAS** the Union(s) desire the stability, security and work opportunities made possible by this Agreement; and

**WHEREAS** the City, under Executive Order No. 15-11, and consistent with other directives of the Mayor, reviews all proposed public works projects with projected construction costs over Five Million Dollars (\$5,000,000) to determine whether the size, complexity, number and types of labor involved or other factors would make them appropriate for the use of a Project Labor Agreement; and

**WHEREAS** the City has determined that the Public Works Project, identified herein at Article II, Section 2 is an appropriate project for a Project Labor Agreement;

**NOW, THEREFORE**, the Parties enter into this Agreement.

The term “Contractor” shall include the Signatory Contractors, all contractors and subcontractors of whatever tier engaged in on-site construction work within the scope of this Agreement.

The term “craft” as applied to employees and workers shall mean those skills, crafts and trades of workers represented by the Union(s) as defined herein.

The Union(s) and the Contractors, their assigns, subcontractors and transferees agree to abide by the terms and conditions contained in this Agreement with respect to the performance of the construction by the Contractors of the Public Works Project covered by this Agreement. This Agreement represents the complete understanding of the parties, and it is further understood that no Contractor is required to sign any other agreement as a condition of performing work within the scope of this Agreement. No practice, understanding or agreement between a Contractor and a Union party which is not explicitly set forth in this Agreement and the Schedules hereto shall be binding on any other party.



## **ARTICLE I - PURPOSE**

As provided in Mayor's Executive Order No. 15-11, the City has a compelling interest in carrying out the Public Works Project at the lowest reasonable cost, highest level of efficiency, and the highest degree of quality.

Further, it has been recognized by the City that certain major Public Works Projects can best be carried out through the use of Project Labor Agreements, as defined in Mayor's Executive Order No. 15-11, which ensure that labor disputes are resolved without disruptions resulting from strikes, lockouts or slowdowns and which provide for enforceable guarantees that the Public Works Project will be carried out in an orderly and timely manner without strikes, lockouts or slowdowns and with provisions protecting the wages, hours, working conditions and safety of those workers whose skills are required to complete such projects. Project Labor Agreements can provide the City with cost savings and efficiencies through project-specific adjustments to collective bargaining agreements that allow for project-specific appropriate hours of work, length of workday and workweek, overtime, starting times, breaks, shift work, crew apprentice ratios, holidays, dispute resolution and management rights, as have been mutually determined and agreed to by the City and the Union(s).

Further, the City has recognized that it can best accomplish these goals by permitting the use of Project Labor Agreements, as defined in Mayor's Executive Order No. 15-11, in major public works projects, on a project by project basis, through which the City has determined, based on thorough investigation, analysis and justification, pursuant to, and in accordance with the procedures set forth in Mayor's Executive Order No. 15-11 and other policies of the Mayor's Office, that the use of a Project Labor Agreement will benefit and enhance the interest of the City from a cost, efficiency, quality and/or safety standpoint.

Further, the City and the Union(s) have received a Report and Recommendations from the Mayor's Advisory Commission on Construction Industry Diversity (the "Commission Report") and the parties

have determined that Project Labor Agreements can provide a framework for meeting long term goals of the City, the Union(s) and Contractors for increasing the opportunities for minorities and women to have successful careers in the construction trades.

Further, the City has recognized that it can best accomplish these goals by requiring that in major public works projects governed by Section 17-107 of the Philadelphia Code, a precondition regarding the award of a contract will be a requirement that the Contractors enter into a Project Labor Agreement with the Philadelphia Building & Construction Trades Council and its affiliated Union(s) requiring such Contractors as well as all subcontractors, assignees or transferees to abide by an agreement setting forth the wages, hours and working conditions of the workers employed on such public works projects.

Accordingly, the parties to this Agreement recognize that it is essential that the construction work on the Public Works Project covered by this Agreement be done in an efficient and economical manner in order to secure optimum productivity and to eliminate any delays in the work. In recognition of the needs of the Public Works Project covered by this Agreement, and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to establish effective methods for the settlement of all misunderstandings, disputes or grievances which may arise under this Agreement.

## **ARTICLE II - SCOPE OF THE AGREEMENT**

Section 1. Scope of Agreement. This Agreement shall apply and is limited to all construction work under the direction of the signatory Contractors and performed by those Contractors of whatever tier which have contracts awarded for such work on and after the effective date of this Agreement, for the City, for the Public Works Project defined in Section 2 below.

Section 2. Covered Projects. The Public Works Project covered by this Agreement is generally described as the construction of the \_\_\_\_\_

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Section 3. Award of Project Contracts.

(a) The City has the absolute right to select any qualified bidder for the award of contracts on this Public Works Project without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement provided, however, only that such bidder is ready, willing and able to execute and comply with this Agreement, which it shall do should it be designated the successful bidder.

(b) It is agreed that all direct subcontractors of Contractors, of whatever tier, who have been awarded contracts for work covered by this Agreement on or after the effective date of this Agreement shall be required to accept and be bound by the terms and conditions of this Project Labor Agreement.

Section 4. Contract Administration.

(a) This Agreement is intended to provide close cooperation between management and labor. The Project Relations Committee (as further described in Section 4 (c)), shall monitor compliance with this Agreement by all Contractors which, through their execution of this Agreement, together with their subcontractors or transferees, have become bound hereto. The Project Relations Committee shall monitor compliance with this Agreement by all Union(s) which, through their execution of this Agreement have become bound hereto.

(b) The provisions of this Agreement, including Collective Bargaining Agreements which are listed on and collectively designated as Schedule A, shall apply to the construction of the Public Works Project covered by this Agreement, notwithstanding the provisions of Local or International Agreements which may conflict or differ from the terms of this Agreement. Where a subject covered by

the provisions of this Project Labor Agreement, including but not limited to, Schedule D Project Specific Conditions, is also covered by any of the Collective Bargaining Agreements on Schedule A, the provisions of this Agreement shall prevail.

(c) The Signatory Contractors to this Agreement shall agree to establish a Project Relations Committee composed of “thirteen (13) members. Four (4) individuals shall be appointed by the Contractors signatory to this Agreement, four (4) individuals shall be appointed by the Union(s) and four (4) individuals shall be appointed by the City. The Philadelphia Area Labor Management Committee shall appoint one representative who will act as facilitator and staff to the Committee. The Project Relations Committee shall operate under the Philadelphia Area Labor-Management Built-Rite process.

(d) The Project Relations Committee shall meet as required, but not less than once each quarter to review performance and the operation of this Agreement.

(e) The purpose of this Project Relations Committee is as follows:

(1) To improve communications between representatives of labor and management and engender cooperative and harmonious relations between labor and management performing work under this Agreement.

(2) Provide workers and Contractors with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness. (Example: Joint process to reduce worksite injuries.)

(3) Provide a forum for open and honest discussion of problems confronting labor and management, and of eliminating potential problems.

(4) Study and explore ways of increasing productivity of both labor and management, and of eliminating potential problems.

(5) Enhance the involvement of workers in making decisions that affect their working lives, and to improve the quality of work life for the employees.



(6) Expand and improve working relationships between workers and managers.

(7) Identify conflicts between labor and management before they arise as disputes, and promptly assist in fairly resolving disputes when they do arise.

(8) Seek to maintain a productive dialogue.

(9) Pursue, achieve and document the implementation of all aspects of Schedule C, pertaining to increasing employment opportunities for women and minorities.

(10) Support the Contractors in meeting general obligations and specific project goals for local hiring and for worker diversity as may be part of the Economic Opportunity Plan for the Public Works Project and as further described in Schedule E.

Section 5. Binding Effect. This Agreement and Schedules, including but not limited to Schedules A, B, C, D and E, attached hereto shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

Section 6. Limitations. This Agreement shall be limited to work historically recognized as construction work, including, specifically, the site preparation and related demolition work necessary to prepare the site for construction, and such rehabilitation of existing facilities as is directed by the City. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work or function which may occur in or around the Public Works Project site or be associated with the development of the Public Works Project, or with the ongoing operations of the City.

Section 7. Exclusions. Items specifically excluded from the scope of this Agreement include, but are not limited to, the following:

(a) Work of non-manual employees, including but not limited to, superintendents, supervisors, staff engineers, surveyors (except where expressly covered by a Collective Bargaining Agreement in Schedule A), inspectors, quality control personnel, quality assurance personnel, timekeepers, mail carriers, clerks and office workers, including messengers, guards, emergency medical

and first aid technicians and other professional, engineering, administrative, supervisory and management employees.

(b) Equipment and machinery owned or controlled and operated by the City.

(c) All off-site handling of materials, equipment or machinery and all deliveries to and from the Public Works Project site except where expressly covered by a Collective Bargaining Agreement in Schedule A.

(d) All employees of the City.

(e) Any work performed on or near, or leading to or into, the Public Works Project site by state, county, city or other governmental bodies, or their Contractors; or by public utilities or their Contractors and/or by the City, or its contractors, for work which is expressly not part of the Public Works Project covered by this Agreement.

(f) Off-site maintenance on leased equipment and on-site supervision of such work except where expressly covered by a Collective Bargaining Agreement in Schedule A.

(g) Off-site warranty functions and warranty work and on-site supervision of such work except where expressly covered by a Collective Bargaining Agreement in Schedule A.

(h) Exploratory geophysical testing, except where expressly covered by a Collective Bargaining Agreement in Schedule A.

(i) Laboratory or specialty testing or inspections or monitoring activities not ordinarily done by the crafts.

(j) Other work which may occur from time to time.

Section 8. Applicability of Agreement. Nothing contained herein shall be construed to prohibit or restrict the City or its employees from performing work not covered by this Agreement on a Public Works Project site. As areas and systems of a Public Works Project are inspected, construction

tested and accepted by the City, the Agreement shall not have further force or effect on such items or areas, except when the Contractors are directed by the City to engage in repairs, modifications, check-out, and/or warranty functions required by their contract(s) with the City .

Section 9. Termination, Delay or Suspension of Public Works Project. It is understood that the City, at its sole option, may terminate, delay and or suspend any or all portions of the Public Works Project at any time.

Section 10. Contractor and Union(s) Liability. It is understood and agreed that the liability of any Contractor and the liability of separate Union(s) under this Agreement shall be several and not joint. The Union(s) agree that this Agreement does not have the effect of creating any joint employment status between or among the City and any Contractor.

### **ARTICLE III - UNION RECOGNITION AND EMPLOYMENT**

Section 1. Union Recognition. The Contractor recognizes the Union(s) as the sole and exclusive bargaining representatives of all craft employees working on the Public Works Project within the scope of this Agreement.

Section 2. Referrals. The Union(s) are recognized as the source of employment referrals. The appropriate Union(s) will be contacted and shall refer all applicants for employment to this Public Works Project according to the standards or criteria uniformly applied to any construction project in the area. In the event that any Union is unable to fill any requisition for employees within a forty eight (48) hour period after such requisition is made by the Contractor (Saturdays, Sundays and Holidays excepted), the Contractor may solicit and employ applicants from any other available source. The Contractor shall notify the Union(s) of employees hired by any source other than referral by the Union(s).

Section 3. Referral Systems. Subject to the Contractor's right to call for a specific skill or ability, the job referral systems provided in the Collective Bargaining Agreements of the Union(s) set forth in Schedule A hereto, or, in the absence of such language, the referral practices in place at the Union(s), will be in effect for the purpose of initial employment only. Such job referral system, whether by contract or practice, must be operated in a non-discriminatory manner and in full compliance with Federal, state and local laws and regulations which require equal employment opportunities and non-discrimination, and referrals shall not be affected in any way by the rules, regulations, by-laws, constitutional provisions or any other aspect or obligations of Union membership and shall be subject to such other conditions as established in this Article and in Schedule C.

Section 4. Competency. The Contractor shall have the right to determine the competence of all employees, the right to determine the number of employees required and have the sole responsibility for selecting the employees to be laid-off consistent with this Agreement regardless of membership or non-membership in the Union(s). The Contractor shall also have the right to reject any applicant referred by the Union(s).

Section 5. Union Security. It shall be a condition of employment that all employees of Contractor covered by this Agreement who are members of the Union(s) in good standing on the effective date of this Agreement or on the date of execution of this Agreement, whichever is later, shall remain members in good standing and those who are not members on the effective date shall, on the eighth (8<sup>th</sup>) day following employment, become and remain members in good standing in the Union(s) for the term of this Agreement.

Section 6. Skilled Craftsmen. The Union(s) will exert their utmost efforts to recruit sufficient numbers of skilled craftsmen to fulfill the manpower requirements of the Contractor.

Section 7. Selection of Foremen. The selection of craft foremen and/or general foremen and the number of foremen required shall be entirely the responsibility of the Contractor. All foremen shall



take orders exclusively from the designated Contractor representatives. Craft foremen shall be designated as working foremen by the Contractor, except when the Contractor determines that it is not possible for a particular foreman to be working foreman.

Section 8. Seniority. Individual seniority shall not be recognized or applied to employees working on the Public Works Project.

#### **ARTICLE IV - UNION REPRESENTATION**

Section 1. Access to Public Works Project Site. Authorized and designated representatives of the Union(s) shall have access to the Public Works Project, consistent with rules, regulations and policies as have been established for site security and safety and through established Contractor procedures, for the purpose of transacting business in connection with the job. Such representatives shall be subject to security clearances and may require authorized escorts to enter secure areas of the Public Works Project. Such representatives shall not interfere with the work of employees or cause unnecessary loss of time by the employees.

Section 2. Stewards. Stewards shall be appointed consistent with the appropriate Collective Bargaining Agreement as included in Schedule A.

Section 3. Non-interference. On work where City personnel or personnel of other contractors not signatory to this Agreement may be working in close proximity of the construction activities, the Union(s) agree that the Union's representatives, stewards and individual workers will not interfere with the City's personnel or the personnel of other contractors not signatory to this Agreement or with the work which is being performed by the City's personnel or personnel of other contractors not signatory to this Agreement. There shall be no interference by employees covered under this Agreement with on-site concessionaires.

## **ARTICLE V - MANAGEMENT RIGHTS**

Section 1. **Management Rights.** The Contractor retains full and exclusive authority for the management of its operation consistent with this Project Labor Agreement and the collective bargaining agreements included in Schedule A. The Contractors retain the right to (i) plan, direct and control the workforce and the operation of all of his work, including the hiring, promotion, demotion, transfer, layoff, suspension, discipline or discharge for just cause of its employees; (ii) select foremen, determine the size and make-up of each crew; (iii) assign and schedule work; (iv) promulgate work rules; (v) regulate the use of all equipment and other property of the Contractors, decide the amount of equipment to be used, the number of employees needed; and (vi) regulate overtime work, the determination of when it shall be worked, and the number and identity of employees engaged for such work. No rules, customs or practices which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractors may utilize any methods or techniques of construction.

Section 2. **Choice of Materials.** There shall be no limitation or restriction upon the Contractors' choice of materials or design, nor, subject to the principle of legitimate work preservation set forth in the following sentence, upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices unless otherwise specified in Schedule A. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work: provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation consistent with Schedule A, including, but not limited to check-off or testing of specialized or unusual equipment or facilities.

Section 3. **New Technology and Devices.** It is recognized that the use of new technology, equipment, machinery, tools and/or labor saving devices and methods of performing work will be initiated by the Contractor from time to time during the Public Works Project. The Union(s) agree that they will

not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractors and the Union(s) concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractors, and the Union(s) shall have the right to grieve and/or arbitrate the dispute as set forth in Article XIII of this Agreement.

#### **ARTICLE VI - HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

Section 1. Hours of Work, Overtime, Shifts and Holidays shall be governed by the Collective Bargaining Agreements included in Schedule A, except as mutually determined and agreed to by the Union(s) and the City and provided in Schedule D Project Specific Conditions.

Section 2. Where modifications to the Collective Bargaining Agreements or the provisions of Schedule D Project Specific Conditions are in the best interest of a project, such departure may be requested by the Contractors, Union(s) and the City. Such departures shall be requested utilizing the Project Relations Committee and shall be approved by mutual consent.

#### **ARTICLE VII - WORKING CONDITIONS**

Section 1. Job Site Conditions. All job site working conditions, including rest periods, coffee breaks and work practices, shall be as determined by the Contractors.

Section 2. Public Works Project Rules. The Contractors shall establish such other reasonable Public Works Project rules as each Contractor deems appropriate. All rules and regulations shall be observed by Union employees who, by virtue of their Union membership and coverage under an appropriate Collective Bargaining Agreement, are made subject to such rules.

### **ARTICLE VIII - APPRENTICES**

Section 1. Apprentices. Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry, the Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities which is customarily performed by the craft in which they are indentured. Apprentices shall be employed in a manner consistent with the provisions of this Agreement including but not limited to Schedules C and E. The Contractors may also utilize apprentices as appropriate and consistent with the Schedule A Collective Bargaining Agreements or as provided in Schedule D Project Specific Conditions.

### **ARTICLE IX – EMPLOYMENT OPPORTUNITIES FOR PHILADELPHIA RESIDENTS, MINORITIES AND WOMEN**

Section 1. Employment Opportunities For Philadelphia Residents. The parties recognize that the size and scope of the Public Works Project covered by this Agreement, the number of craftsmen and others expected to be employed in order to complete the work in a timely fashion, and the extended period of time during which the construction will be underway should provide significant employment opportunities for qualified residents of the City of Philadelphia. The parties further recognize that the Economic Opportunity Plan for the Public Works Project includes specific local hiring goals for the Contractors as established in Schedule C.

Section 2. Opportunities for Women and Minorities. The parties also agree that increasing participation by women and minorities employees on the Public Works Project is a desirable goal. Accordingly, the parties shall undertake the activities identified in Schedule C to support the City, Union and Contractor objectives of increased opportunities for participation in the Union(s) and for actual work

performed. Additional responsibilities of the Contractor under the Economic Opportunity Plan related to diversity are described and required in Schedule E.

#### **ARTICLE X - SAFETY, PROTECTION OF PERSON AND PROPERTY**

Section 1. Safe Working Conditions. In accordance with the requirements of the Occupational Safety and Health Act, it shall be the exclusive responsibility of each Contractor on the job site to ensure safe working conditions for its employees and their compliance with any safety rules contained herein or established by the Contractors, provided however, it is understood that the employees have an obligation as set forth in Section 2 below.

Section 2. Safe Performance of Work. Employees must use diligent care to perform their work in a safe manner and to protect themselves, other persons and the property of the Contractors or the City. Failure to do so will be grounds for discipline, including discharge.

Section 3. Safety, Security and Visitor Rules. Employees covered by the terms of this Agreement shall at all times while in the employ of the Contractors be bound by the safety, security and visitor rules as established by the City and/or the Contractors in accordance with applicable State and Federal safety and health statutes and regulations. These rules will be published and posted in conspicuous places through the Project.

#### **ARTICLE XI - NO DISCRIMINATION**

Section 1. No Discrimination. The Contractors and Union(s) agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or age in any manner prohibited by law or regulation. It is recognized that special procedures may be established by joint agreement of the parties to this Agreement and governmental agencies for the training and employment of persons who have not previously qualified to be employed on

construction projects of the type covered by this Agreement. The parties to this Agreement will make all good faith efforts to assist in the proper implementation of such orders, regulations or agreements for the benefit of the population within the jurisdiction of the City of Philadelphia.

Section 2. Complaints. Any complaints regarding application of the provisions of Section 1 should be brought to the immediate attention of the involved Contractors for consideration and resolution.

Section 3. Masculine or Feminine Gender. The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

## **ARTICLE XII - WORK STOPPAGES AND LOCKOUTS**

Section 1. There shall be no strike, picketing, work stoppages, slowdowns, sickouts or other disruptive activity for any reason by the Union(s) or employees against any Contractor covered under this Agreement, and there shall be no lockouts by the Contractors. Failure of any of the Union(s) or any employee to cross any picket line established by any Union, signatory or non-signatory, or any other organization, at or in proximity to the Project site is a violation of this Article.

Section 2. The Contractors may discharge any employee violating Section 1 above, and any such employee will not be eligible for referral under this Agreement for a period of ninety (90) working days from the date of his discharge. The Contractors and the Union(s) shall take all steps necessary to obtain compliance with this Article and neither shall be held liable for conduct for which it is not responsible.

## **ARTICLE XIII - DISPUTES AND GRIEVANCES**

Section 1. Agreement Interpretation. It is specifically agreed that in the event any disputes arise out of the interpretation or application of this Agreement the same shall be settled by the Project Relations Committee. All disputes arising out of Contractor-employee issues shall be governed by



Section 2 of this Article. No such grievance shall be recognized unless called to the attention of the Contractor within seven (7) calendar days after the alleged violation was committed.

Section 2. Unless otherwise provided for in Schedule D Project Specific Conditions, it is specifically agreed that in the event any disputes arise between the Contractors and Union employees that do not involve the interpretation or application of this Agreement, and/or questions of jurisdiction of work, the same shall be settled by means of the grievance procedures currently set forth in the local Collective Bargaining Agreements set forth in Schedule A.

#### **ARTICLE XIV - JURISDICTIONAL DISPUTES**

Section 1. There will be no strikes, no work stoppages or slowdowns, or other interferences with the work because of jurisdictional disputes. Pending the resolution of the dispute, the work shall continue uninterrupted as assigned by the Contractors.

Section 2. This Agreement shall generally recognize the traditional craft jurisdiction of the Union(s) and shall require Contractors to abide by said traditional craft jurisdiction. Contractors will utilize the Collective Bargaining Agreements in Schedule A as references to establish the Unions' basic jurisdictions. If there is any dispute concerning this section, the issue may be submitted by any concerned party for final and binding resolution to the American Arbitration Association.

#### **ARTICLE XV - SAVINGS AND REPARABILITY**

Section 1. It is not the intention of either the Contractors or the Union parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement.

Further, the Contractors and Union(s) agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of any applicable law and the intent of the parties hereto.

Section 2. This Article shall not be construed to waive the prohibitions of Article XII, and if the parties are unable to resolve their differences, the matter shall be referred to arbitration for resolution as provided for in the grievance-arbitration procedure of Article XIII.

### **ARTICLE XVI - DURATION OF THE AGREEMENT**

This Agreement shall be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and shall continue in effect for the duration of the Public Works Project construction work described in Article II hereof. Construction of any phase, portion, section or segment of Public Works Project shall be deemed complete when such phase, portion, section or segment has been turned over to the City of Philadelphia and has received the final acceptance from the City of Philadelphia's representative.

Each Collective Bargaining Agreement contained in Schedule A hereof attached to this Agreement shall continue in full force and effect until the Contractor(s) or Union(s) who are parties to such Agreement notify the City of the mutually agreed upon changes in those provisions of such Agreements which are applicable to this Public Works Project, and the effective date thereof, which shall then become the effective date under this Agreement. Unless otherwise provided in this Agreement, increases to wages and benefit payments from the effective date each new or amended Collective Bargaining Agreement shall be due and owing upon notification to the Contractors and the City of such increases. The parties agree that any provisions negotiated into any Collective Bargaining Agreement contained in Schedule A hereof will not apply to work on Public Works Project if such provisions are less favorable to the Contractors than those uniformly required of Contractors for construction work normally covered by such an

agreement; nor shall any provision be recognized or applied on any Public Works Project if it may reasonably be construed to apply exclusively to work covered by this Agreement.

In the renegotiation of any of the Collective Bargaining Agreements contained in Schedule A hereof, the Union(s) party to this Agreement agree that there will be no strikes, work stoppages, sympathy strikes, picketing, slowdowns or other disruptive activity affecting the Public Works Project covered by this Agreement because of or related to the renegotiation of any such Collective Bargaining Agreement contained in Schedule A hereof, nor shall there be any lockout on this Public Works Project affecting the Union(s) party to this Agreement during the course of such negotiations.

Any disagreement between the parties over the incorporation into any Collective Bargaining Agreement contained in Schedule A hereof of such provisions agreed upon in the renegotiation of any such Collective Bargaining Agreement as is contained in Schedule A shall be referred to Article XIII hereof for resolution.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed and effective as of the day and year above written.

**FOR THE UNION(S):**

\_\_\_\_\_

**FOR THE CONTRACTORS:**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Contractor

**SCHEDULE A**

**COLLECTIVE BARGAINING AGREEMENTS**

**SCHEDULE B**

**RESERVED**

## **SCHEDULE C**

### **INCREASING OPPORTUNITIES FOR WOMEN AND MINORITIES IN THE BUILDING TRADES UNION(S) AND THE PUBLIC WORKS PROJECTS**

Consistent with the Mayor's Advisory on Construction Industry Diversity Report and Recommendations, the City of Philadelphia, the Union(s) and Contractors shall undertake the following activities:

#### **Section 1. City Activities.**

(a) The City shall collect, tabulate and analyze data, including certified payrolls, related to the participation of male minorities, women and Philadelphia residents in City and City-funded construction projects.

(b) The City shall establish goals for employment of Philadelphia residents in City and City-funded construction projects. For City residents employment in the Public Works Project shall be at least:

Philadelphia Residents: Fifty (50) percent of all construction employment hours.

(c) The City shall establish goals for workforce diversity in City and City-funded construction projects. The current goals are based on the March 2009 Report of the Mayor's Advisory Commission on Construction Industry Diversity. For male minority and women employment in the Public Works Project shall be at least:

Male Minority: Thirty two (32) percent of all construction employment hours

Women: Seven (7) percent of all construction employment hours

(e) The City shall assist the Union(s) in undertaking activities which would benefit from City participation and support.

(f) The City shall establish and support a standing Advisory Commission on Construction Industry Diversity. The City shall invite union leaders, large and small contractors, contractor associations project owners and community leaders to participate.



(g) The City shall designate a City agency for the receipt and redress of complaints from the public about the opportunities for employment on City-funded construction projects.

Section 2. Union Activities.

(a) The Union(s) shall collect demographic data on participation in the Public Works Project. The Union(s) shall provide that information to the City on monthly basis while the Project Labor Agreement is in effect.

(b) The Union(s) shall set participation goals that will significantly increase participation of minority males and women. Such goals shall be consistent with the Commission Report and such Commission updates as may be issued.

(c) The Union(s) shall establish goals for participation of in apprenticeship programs for minority males and women. Such goals shall be consistent with the Commission Report and such Commission updates as may be issued.

(d) The Union(s) shall actively recruit minority males and women for apprenticeship positions. Outreach efforts must be appropriate for reaching minority males and women and consistent with the goals the Union(s) have established for membership of the Union(s).

(e) The Union(s) shall evaluate alternatives to apprenticeship recruitment for adding minority males and women to membership.

(f) The Union(s) shall each identify a representative who shall be responsible for reporting on each Union's progress in improving opportunities for minority males and women.

Section 3. Contractor Activities.

(a) The Contractors shall support the City and Union efforts to increase the participation of minority males and women in the Public Works Project through apprenticeship programs and other initiatives.

(b) The Contractors shall use their best efforts to add minority males and women to their permanent or steady workforces. The Contractors shall provide workforce demographic information to the City in advance of project commencement.

(c) The Contractors shall ensure a work environment that is free from discrimination and supportive of greater participation of minority males and women in the Public Works Project.

(d) The Contractors shall use their best efforts to meet or exceed the goals established for minority males and women participation in Section 1 of this Schedule C.

(e) The Contractors shall provide monthly updates to the City, including but not limited to payroll reports, for the requirements of this Section 3.

#### Section 4. Third Party Monitoring

(a) In the event that the City determines that the Agreement and the goals for participation in the Public Works Project by Philadelphia residents, male minorities and women would benefit from monitoring by a qualified third party ("Monitor"), the monitoring shall be performed by a Monitor selected by the parties. The Contractors and Unions shall provide information and access to the Monitor consistent with the requirements of this Schedule C and the Agreement.

(b) The costs of monitoring by the Monitor shall be shared equally by the parties.

**SCHEDULE D**

**PROJECT SPECIFIC CONDITIONS**

Project specific conditions agreed upon by the Union(s) and the City supersede the provisions established in Schedule A Collective Bargaining Agreements only as to the Public Works Project.

**SCHEDULE E**  
**ECONOMIC OPPORTUNITY PLAN**

# Exhibit C

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROAD-CON, INC.; NESHAMINY CONSTRUCTORS,	:	
INC.; LOFTUS CONSTRUCTION, INC.;	:	
PKF-MARK III; and SCOTT A LAVACA	:	
Plaintiff	:	Case No.
	:	2:19-cv-01667-JS
vs.	:	
	:	
THE CITY OF PHILADELPHIA; and JAMES KENNEY,	:	
In his official capacity as Mayor of the City of Philadelphia	:	
Defendants	:	

**DEFENDANTS' RESPONSES AND OBJECTIONS  
TO PLAINTIFFS' REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendants Mayor James Kenney and the City of Philadelphia (the "City"), by and through their undersigned attorneys, respond to Plaintiffs' Requests for Admission (the "Requests") as follows.

**GENERAL OBJECTIONS**

1. The City objects to all of the Requests on the basis that they repeat nearly verbatim allegations contained in the Second Amended Complaint in this case. The City has already answered the Second Amended Complaint and admitted or denied each allegation contained therein. As the Requests are duplicative of the pleadings in this case, they unnecessarily burden the City and do not assist in resolving the issues in this case.

**SPECIFIC RESPONSES TO REQUESTS FOR ADMISSION**

1. Plaintiff Road-Con, Inc. ("Road-Con") is a heavy and highway contractor.

**ANSWER:** Admitted.



2. Road-Con's principal place of business is located at 902 Camaro Run Drive, West Chester, Pennsylvania 19380.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

3. Road-Con is a prequalified PennDOT contractor that regularly works on PennDOT projects with employees who are members of the United Steelworkers.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

4. Neshaminy Constructors, Inc. ("Neshaminy") is a heavy and highway contractor.

**ANSWER:** Admitted.

5. Neshaminy's principal place of business is located at 1839 Bustleton Pike, P.O. Box 405, Feasterville-Trevose, Pennsylvania 19053-7309.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

6. Neshaminy is a taxpayer of the City of Philadelphia.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

7. Neshaminy pays Business Income and Receipts Tax (BIRT).

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

8. Neshaminy is a prequalified PennDOT contractor that regularly works on PennDOT projects with employees who are members of the United Steelworkers.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily

obtain is insufficient to enable it to admit or deny this Request.

9. Loftus Construction, Inc. (“Loftus”) is a heavy and highway contractor.

**ANSWER:** Admitted.

10. Loftus’s principal place of business is located at 1903 Taylors Lane,  
Cinnaminson, New Jersey 08077.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

11. Loftus is a prequalified PennDOT contractor that regularly works on PennDOT projects with employees who are members of the United Steelworkers.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

12. Road-Con, Neshaminy, and Loftus are members of the Pennsylvania Heavy and Highway Contractors Bargaining Association (the “Association”).

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

13. A copy of the collective bargaining agreement between the Association and the United Steelworkers is attached at Exhibit “A.”

**ANSWER:** Admitted.

14. The collective-bargaining agreement between the Association and the United Steelworkers governs the terms and conditions of employment at Road-Con, Neshaminy, and Loftus.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the

foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

15. PKF-Mark III (“PKF”) is a heavy and highway contractor.

**ANSWER:** Admitted.

16. PKF’s principal place of business is located at 170 Pheasant Run, Newtown, Pennsylvania 18940.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

17. PKF is a signatory to a collective-bargaining agreement with United Steelworkers Local 15024.

**ANSWER:** Admitted.

18. A true and correct copy of PKF’s collective bargaining agreement with the United Steelworkers is attached at Exhibit “B.”

**ANSWER:** Admitted.

19. The collective-bargaining agreement between PFK and the United Steelworkers governs the terms and conditions of employment at PKF.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

20. PKF is a prequalified PennDOT contractor that regularly works on PennDOT projects with employees who are members of the United Steelworkers.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily

obtain is insufficient to enable it to admit or deny this Request.

21. PKF is also a taxpayer of the City of Philadelphia.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

22. PKF pays Business Income and Receipts Tax (BIRT), sales and use tax, and city wage taxes to the city.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

23. Scott A. LaCava (“LaCava”) is an adult individual who resides in the Commonwealth of Pennsylvania.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

24. LaCava is an employee of Road-Con.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

25. LaCava is a member of the United Steelworkers.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

26. The employees of Road-Con, Neshaminy, Loftus, and PKF have chosen the United Steelworkers to be their bargaining representative.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

27. The collective-bargaining agreement between PFK and the United Steelworkers

governs the terms and conditions of employment at PKF.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

28. Road-Con, Neshaminy, Loftus, and PKF have completed many projects for state and federal agencies, including PennDOT and SEPTA, which include projects owned by those agencies located within the City.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

29. On November 29, 2011, then-Mayor Michael A. Nutter signed the Executive Order 15-11.

**ANSWER:** Admitted.

30. An authentic copy of Executive Order 15-11 is attached as Exhibit “C.”

**ANSWER:** Admitted.

31. Attached to the Executive Order 15-11 is a document entitled “Philadelphia Public Projects Labor Agreement.”

**ANSWER:** Admitted.

32. An authentic copy of the Philadelphia Public Projects Labor Agreement is attached to this stipulation as Exhibit “D.”

**ANSWER:** Admitted.

33. On December 31, 2015, then-Mayor Michael A. Nutter signed the Executive Order 8-15.

**ANSWER:** Admitted.

34. An authentic copy of Executive Order 8-15 is attached as Exhibit “E.”

**ANSWER:** Admitted.

35. Attached to the Executive Order 8-15 is a document entitled “Philadelphia Public Projects Labor Agreement.”

**ANSWER:** Denied. There is no document entitled “Philadelphia Public Projects Labor Agreement attached to Executive Order 8-15.

36. This Philadelphia Public Projects Labor Agreement serves as a model project labor agreement for the city to use when it decides to impose a project labor agreement on a public-works project.

**ANSWER:** The City objects to this Request on the grounds that the term “model” is vague and undefined. The City admits only that the Philadelphia Public Projects Labor Agreement serves as a template and that the City may modify the template for particular projects.

37. The City has been imposing project labor agreements on all public-works construction projects with an estimated cost in excess of \$3,000,000.

**ANSWER:** Denied.

38. The City and the Mayor have imposed project labor agreements even when a City Agency has not recommended a PLA for a particular public-works project.

**ANSWER:** Denied.

39. The unions currently affiliated with the Philadelphia Building & Construction Trades Council are:

a. I.B.E.W. Local 98;



- b. I.B.E.W. Local 269;
- c. I.B.E.W. Local 654;
- d. Elevator Constructors Local 5;
- e. SEIU 32BJ;
- f. Insulators & Allied Workers Local 14;
- g. Insulators & Allied Workers Local 89;
- h. Cement Masons Plasters Union Local 592;
- i. Operative Plasters and Cement Masons' Local 8;
- j. Iron Workers Local 401;
- k. Iron Workers Local 451;
- l. Laborers' District Council of the Metropolitan Philadelphia Area and Vicinity;
- m. Laborers' Local 135;
- n. Laborers' Local 57;
- o. Laborers' Local 332;
- p. Laborers' Local 413;
- q. Operating Engineers Local 835;
- r. Operating Engineers Local 542;
- s. Painters & Allied Trades, District Council 21;
- t. Plumbers Local 690;
- u. Reinforced Iron Workers Riggers & Machinery Movers Local Union 405;
- v. Roofers Local 30;
- w. IATSE Local 8;

- x. Sheetmetal Workers Local 19;
- y. Sprinklerfitters Local 692;
- z. Steamfitters Local 420;
- aa. Teamster Locals 312, 384, and 107; and
- bb. Bricklayers and Allied Craftworkers Local 1.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

- 40. As of the date on which this request for admission is answered, the United Steelworkers is neither a member nor an affiliate of the Building Trades Council.

**ANSWER:** Admitted.

- 41. As of the date on which this request for admission is answered, the City has never included the United Steelworkers in any of its project labor agreements.

**ANSWER:** Admitted.

- 42. A true and correct copy of the city's response to an e-mail inquiry sent by Road-Con on March 28, 2019, is attached at Ex. "F."

**ANSWER:** Admitted. However, the City makes no admission with respect to the admissibility of Ex. F into evidence.

- 43. Road-Con, Neshaminy, Loftus, and PKF are qualified in all respects to perform work on City public-works projects that are subject to a project labor agreement.

**ANSWER:** Denied.

- 44. At the time the original complaint in this lawsuit was filed on April 18,

2019, the Mayor and the City were imposing project labor agreements on all public works construction projects procured by the City with an estimated cost in excess of \$3,000,000.

**ANSWER:** Denied.

45. In March 2019, the City issued a solicited bids for the 15th Street Bridge Project.

**ANSWER:** Admitted.

46. The bidding for the 15th Street Bridge Project opened on April 23, 2019.

**ANSWER:** Denied. Per the PHL Contracts website, opening of bids for this project occurred on April 30, 2019.

47. At the time the original complaint in this lawsuit was filed on April 18, 2019, the city was using a project labor agreement on the 15th Street Bridge Project.

**ANSWER:** Denied as stated. The City admits that at the time the original complaint in this lawsuit was filed, the city planned to use a project labor agreement for the 15<sup>th</sup> Street Bridge Project. However, the City withdrew the Project Labor Agreement for this Project and the project proceeded without any Project Labor Agreement.

48. An authentic copy of the Project Labor Agreement that was originally part of the solicitation for the 15th Street Bridge Project is attached at Exhibit "G."

**ANSWER:** Admitted.

49. Plaintiffs Road-Con, Neshaminy, and Loftus were interested in submitting bids for the 15th Street Bridge Project at the time the original

complaint was filed on April 18, 2020.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request. At this time, the City can admit only that Plaintiff Road-Con submitted a bid for the 15<sup>th</sup> Street Bridge Project.

50. Plaintiffs Road Con, Neshaminy, and Loftus are qualified to perform the work on the 15th Street Bridge Project.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request. At this time, the City can admit only that Plaintiffs Road-Con and Loftus were recommended for qualification to bid on the 15<sup>th</sup> Street Bridge Project.

51. Plaintiff Road Con, Neshaminy, and Loftus have been pre-qualified by PennDOT to perform the type of work necessary to complete the 15th Street Bridge Project.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

52. Because Road-Con, Neshaminy, and Loftus maintain a collective bargaining agreement with the United Steelworkers, they cannot perform work on the 15th Street Bridge Project with their current workforces.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

53. At the time the original complaint in this lawsuit was filed on April 18,

2019, LaCava could not work on the 15th Street Bridge Project unless he became a member of one of the unions listed in Schedule A of the 15th Street Bridge Project Labor Agreement and supported that union financially.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

54. In March 2019, the City solicited bids for the Runway Project.

**ANSWER:** Admitted.

55. At the time the original complaint in this lawsuit was filed on April 18, 2019, the city was using a project labor agreement on the Runway Project (the “Runway Project PLA”).

**ANSWER:** Denied as stated. The City admits that at the time the original complaint in this lawsuit was filed, the city planned to use a project labor agreement for the Runway Project. However, the City withdrew the Project Labor Agreement for this Project and the project proceeded without any Project Labor Agreement.

56. An authentic copy of the Runway Project PLA that was originally a part of the solicitation for the Runway Project is attached at Exhibit “H.”

**ANSWER:** Admitted.

57. Plaintiffs Road-Con and Loftus were interested in submitting bids for the Runway Project at the time the original complaint was filed on April 18, 2020.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request. At this time, the City can

admit only that Plaintiff Road-Con submitted a bid for the Runway Project.

58. Plaintiffs Road-Con and Loftus are qualified to perform the work on the Runway Project.

**ANSWER:** After reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request. At this time, the City can admit only that Plaintiff Road-Con was recommended for qualification to bid on the Runway Project.

59. Because Road-Con and Loftus maintain a collective-bargaining agreement with the United Steelworkers, they could not perform work on the Runway Project with their current workforces at the time the original complaint was filed.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

60. Because Road-Con and Loftus maintain a collective-bargaining agreement with the United Steelworkers, they could not perform work on the Runway Project with their current workforces at the time the original complaint was filed.

**ANSWER:** The City objects to this Request on the grounds that it calls for a legal conclusion that is an ultimate legal issue in the case. Subject to and without waiver of the foregoing objection, after reasonable inquiry, the information that the City knows or can readily obtain is insufficient to enable it to admit or deny this Request.

Date: June 29, 2020

Respectfully Submitted,

/s/ Lydia Furst

Amy M. Kirby

Deputy City Solicitor

Pa. Attorney ID No. 323938

Lydia M. Furst

Deputy City Solicitor

Pa Attorney ID No. 307450

City of Philadelphia

Law Department

1515 Arch Street, 15<sup>th</sup> Floor

Philadelphia, PA 19102

(215) 683-3573

amy.kirby@phila.gov

lydia.furst@phila.gov

**CERTIFICATE OF SERVICE**

I hereby certify that, on the date set forth below, I served a true and correct copy of the foregoing Responses and Objections to Plaintiffs' Requests for Admission by email on the following counsel:

Walter S. Zimolong  
Zimolong, LLC  
P.O. Box 552  
Villanova, Pennsylvania 19085  
(215) 665-0842  
[wally@zimolonglaw.com](mailto:wally@zimolonglaw.com)

Jonathan F. Mitchell  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
[jonathan@mitchell.law](mailto:jonathan@mitchell.law)

*Counsel for Plaintiffs*

BY: /s/ Lydia Furst  
Deputy City Solicitor

Dated: June 29, 2020



# Exhibit D

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
PHILADELPHIA DIVISION

**Road-Con, Inc.; Neshaminy  
Constructors, Inc.; Loftus Construction,  
Inc.; PKF-Mark III, Inc.; and Scott A.  
LaCava,**

Plaintiffs,

v.

**City of Philadelphia; and James Kenney,**  
in his official capacity as mayor of the City  
of Philadelphia,

Defendants.

Case No. 2:19-cv-01667-JS

**STIPULATION**

The parties stipulate to the following:

The city used a project labor agreement on a majority of the public-works construction projects with an estimated cost in excess of \$3,000,000 procured by the City from January 1, 2016, to April 18, 2019.



JONATHAN F. MITCHELL  
Pennsylvania Bar No. 91505  
Mitchell Law PLLC  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940 (phone)  
(512) 686-3941 (fax)  
jonathan@mitchell.law

*Counsel for Plaintiffs*

Dated: September 1, 2020



LYDIA FURST  
Deputy City Solicitor  
City of Philadelphia Law Department  
1515 Arch Street, 15th Floor  
Philadelphia, Pennsylvania 19102  
(215) 683-3566  
lydia.furst@phila.gov

*Counsel for Defendants*

# Exhibit E

6. The City's PLAs also contain provisions related to diversity and inclusion within the labor organizations that sign on to City PLAs. During my time as Deputy Mayor of Labor, I have seen improvement in the diversity of workforces used on City projects that require PLAs. I believe these improvements are due, at least in part, to the City's use of PLAs.

7. The 15<sup>th</sup> Street Bridge Project initially included a PLA because the complex and time-sensitive nature of the work demanded it. The work on this project required close coordination between contractors and several utility companies. In addition, if the 15<sup>th</sup> Street Bridge Project was delayed, it also would have delayed the police department's move to its new headquarters.

8. The Runway Project at Philadelphia Northeast Airport also initially included a PLA because it was time-sensitive and required multiple trades. Delay on this project would have impacted airport operations.

9. In the past, the United Steelworkers union has not been a signatory to City PLAs, for several reasons.

10. Many City contracts do not involve the type of heavy road work projects which United Steelworkers-affiliated contractors typically perform, so the United Steelworkers have not been selected as an appropriate labor union for some projects.

11. Further, in or around 2018 the City engaged in discussions with the United Steelworkers in an attempt to include the United Steelworkers as a signatory to the City's PLAs. The discussions were ultimately unsuccessful because the United Steelworkers believed that their organization could not comply with the diversity and inclusion goals of the City's PLAs.

12. Prior to the 15<sup>th</sup> Street Bridge and Runway Projects, I am not aware of any time when United Steelworkers-affiliated contractors notified the City of their interest in bidding on a specific City public works project that required a PLA to which the United Steelworkers were not a party.

13. After this case was filed in April 2018, the City has re-evaluated its practices with respect to PLAs. During this re-evaluation period, the City has refrained from using PLAs on

projects. From April 18, 2019 to the present, the City has solicited a bid for one project that required a PLA, which was a re-bid of a project that was originally bid prior to the filing of this lawsuit.

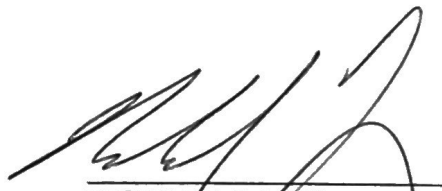
14. On October 15, 2020, Mayor James Kenney signed a new Executive Order related to PLAs, which rescinded Executive Order 8-15. A copy of the new Executive Order is attached to this Declaration as Attachment 1.

15. The new Executive Order removes the dollar threshold for PLAs and tailors the PLA recommendation process to the factors that Pennsylvania courts have focused on in evaluating the use of PLAs by government entities, such as the size and complexity of a project, the need for multiple trades, and an inflexible construction deadline.

16. If the City decides to use a PLA on a project in the future and it is a project for which the United Steelworkers may be an appropriate labor organization, the United Steelworkers will be provided an opportunity to sign on to the PLA before bids are solicited for the project.

17. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Date: December 1, 2020



RICHARD LAZER  
Philadelphia Deputy Mayor of Labor

# Attachment 1

**EXECUTIVE ORDER NO. \_\_\_\_\_**

**PUBLIC WORKS PROJECT LABOR AGREEMENTS**

WHEREAS, the Courts in Pennsylvania have provided guidance on when certain government projects, because of their critical deadlines, are generally appropriate for Project Labor Agreements; and

WHEREAS, the City has gained useful insight into when Project Labor Agreements are appropriate and beneficial to the City; and

WHEREAS, the City's history with Project Labor Agreements has demonstrated that such agreements are a valuable public contracting approach for ensuring that a building or construction work project is completed at the lowest reasonable cost, by the highest quality and most professional work force, and in a timely manner without labor disruptions such as strikes, lockouts, or slowdowns; and

WHEREAS, the City of Philadelphia ("City") has a compelling interest in awarding building or construction work contracts so as to yield the lowest reasonable costs and the highest standard of quality and efficiency;

NOW, THEREFORE, by the powers vested in me by the Philadelphia Home Rule Charter, it is hereby ORDERED:

**SECTION 1. Definitions**

(a) Appropriate Labor Organization. An organization representing, for purposes of collective bargaining, journeymen in one or more crafts or trades with a Federal or State-certified apprenticeship training program, and which:

- i. has entered into a labor agreement with an employer in the building and construction industry;
- ii. has represented journeymen, mechanics, and apprentices employed on projects similar to the Project for which a Project Labor Agreement is being considered;
- iii. possesses the present ability to refer, provide, or represent qualified journeymen and apprentices in the crafts or trades required by the Project, in sufficient numbers to perform the contracted work involved in the project; and



- iv. has identified member diversity as an organizational value and has established objectives for maintaining and increasing diversity among its apprentice and journeyman members.

b) City Agency. A City office, department, board, commission, or other entity that procures goods and services directly or through the City Procurement Department.

(c) Project. The work performed at a specified location or under specified City contracts.

(d) Project Labor Agreement. A collective bargaining agreement between a contractor as an employer and an Appropriate Labor Organization and relating to a Project. Such an agreement sets forth the terms and conditions of employment for workers hired by the employer and sets forth certain work rules, no-strike clauses, jurisdictional determinations and other Project-specific provisions that the City or the Labor Organization deem important for the completion of the Project. All Project Labor Agreements shall be subject to the review and approval of the City's Office of Labor and Law Department.

## **SECTION 2. Recommendations for Project Labor Agreements**

(a) When a City Agency has determined that a Project is appropriate for a Project Labor Agreement, the City Agency shall provide the Mayor's Office of Labor ("Office of Labor") with a written description of the Project and the City Agency's recommendation for a Project Labor Agreement.

(b) The recommendation of the appropriateness and feasibility of using a Project Labor Agreement shall specifically address the following factors:

- i. The need for completion without delay, and without the interruption of strikes, lockouts, or any work stoppage or slowdown that affects a Project;
- ii. The need for effective and timely mechanisms for resolution of disputes; and
- iii. The need for a ready and adequate supply of highly skilled and highly trained craft workers for the performance of the Project.

## **SECTION 3. Approval for Project Labor Agreement**

(a) The Office of Labor shall review all recommendations in consultation with the Law Department. All Project Labor Agreements shall be subject to the review and approval of the City's Office of Labor and Law Department.

(b) If the Office of Labor determines that the Project may benefit from a Project Labor Agreement, the Office of Labor shall identify and contact the Appropriate

Labor Organizations regarding their interest and willingness to enter into a Project Labor Agreement.

(c) The Office of Labor may determine that a Project Labor Agreement will benefit from third-party monitoring of the opportunities provided for qualified City residents, minorities, and women. If so determined, the Office of Labor will direct the Labor Standards Unit to select and contract with a qualified monitor ("Monitor"). If a Monitor is engaged for the Project, the cost shall be shared by the City contractor(s) and the Appropriate Labor Organizations.

#### **SECTION 4. Required Provisions In Project Labor Agreements**

Any Project Labor Agreement entered into pursuant to this Executive Order shall:

- (a) Contain guarantees against strikes, lockouts, slowdowns, and similar actions;
- (b) Set forth effective, immediate, and mutually binding procedures for resolving jurisdictional disputes;
- (c) Include diversity goals for Appropriate Labor Organizations and contractors;
- (d) Make clear that no employee shall be required to be or become a member of an Appropriate Labor Organization or pay any agency fees to an Appropriate Labor Organization, as a condition of performing work under the Project Labor Agreement. Any provision in a Project Labor Agreement that requires an employee to be, or become, a member of Appropriate Labor Organization, or to pay any agency fees to an Appropriate Labor Organization, shall be unenforceable, null, and void; and
- (e) Be consistent with rulings of Pennsylvania courts and other courts of competent jurisdiction.

#### **SECTION 5. Procedures for Project Labor Agreements**

If a Project Labor Agreement is used pursuant to this Executive Order for any Project, the procedures listed in this section shall be followed:

- (a) A Project Labor Agreement shall be made part of the bid specifications in a form approved by the City's Law Department;
- (b) The instructions to bidders shall provide that the City, the Project manager, and any contractor shall have the absolute right to select any qualified bidder for the award of Project contracts without reference to whether the bidder was unionized; provided, however, that only a bidder willing to execute and comply with the Project Labor Agreement would be designated the successful bidder;

(c) The instructions to bidders shall provide that the Project Labor Agreement shall be made binding on all contractors and subcontractors on the Project through inclusion of appropriate bid specifications in all relevant bid documents;

(d) Following the award of the contract for the Project, the Project Labor Agreement shall be finalized and executed by the contractor or its project manager; and

(e) The Project contract and the Project Labor Agreement shall comply with all other provisions of law.

#### **SECTION 6. Prior Order Rescinded**

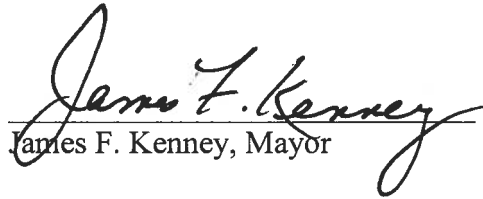
Executive Order No. 8-15 is hereby rescinded.

#### **SECTION 7. Effective Date**

This Executive Order shall take effect immediately.

Date

10/15/20

  
James F. Kenney, Mayor

# Exhibit F



# CITY OF PHILADELPHIA

JAMES F. KENNEY, Mayor

Mayor's Office of Labor

**RICHARD LAZER**  
**Deputy Mayor for Labor**  
205 City Hall  
Philadelphia, PA 19107  
(215) 686-2163

November 26, 2018

Wally Zimolong, Esquire  
353 West Lancaster Avenue, Suite 300 |  
Wayne, PA 19087  
Mailing Address: P.O. Box 552, Villanova, PA 19085-0552  
wally@zimolonglaw.com

Dear Mr. Zimolong,

The City has given your correspondence a thorough review. Our conclusion is that the City is willing to include in City Project Labor Agreements (PLAs) the language that had previously been used in a PennDOT PLA. That language is:

In the event that a contractor bound by a Collective Bargaining Agreement (CBA) with the United Steelworkers (USW) is the successful bidder, the contractor will be permitted to utilize its USW workforce and its USW CBA provided that the contractor adheres to the conditions and economic terms of the agreement excluding any hiring hall obligation or union security provision. And provided further that the USW contractor is either a protected contractor, under the terms of the Harmony Agreement of February 24, 1994 or has been organized by USW pursuant to paragraph 3 (b) of the Harmony Agreement for at least 120 days prior to the issuance of any bid specification for the Project and provided that it normally performs the type of work being let in the geographical area of the project.

The City is not considering other changes to its standard PLA.

In addition to the USW contractor agreeing to City bid requirements, including City Economic Opportunity Plans and other City workforce and subcontracting provisions, the City requires that the United Steelworkers agree to the conditions of Schedule C of the PLA. The City will require a letter from the appropriate leadership of the United Steelworkers affirming its agreement with the Union obligations in Schedule C.

Specifically, the Union obligations are as follows:

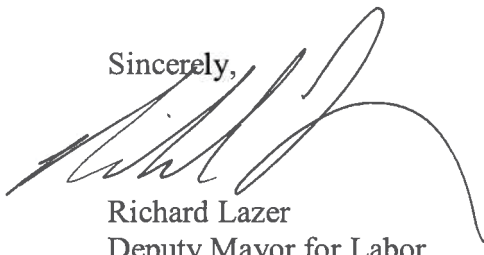
Section 2. Union Activities.

- (a) The Union(s) shall collect demographic data on participation in the Public Works Project. The Union(s) shall provide that information to the City on monthly basis while the Project Labor Agreement is in effect.
- (b) The Union(s) shall set participation goals that will significantly increase participation of minority males and women. Such goals shall be consistent with the Commission Report and such Commission updates as may be issued.
- (c) The Union(s) shall establish goals for participation of in apprenticeship programs for minority males and women. Such goals shall be consistent with the Commission Report and such Commission updates as may be issued.
- (d) The Union(s) shall actively recruit minority males and women for apprenticeship positions. Outreach efforts must be appropriate for reaching minority males and women and consistent with the goals the Union(s) have established for membership of the Union(s).
- (e) The Union(s) shall evaluate alternatives to apprenticeship recruitment for adding minority males and women to membership.
- (f) The Union(s) shall each identify a representative who shall be responsible for reporting on each Union's progress in improving opportunities for minority males and women.

I have attached a draft PLA including the USW inclusion language. It is found in Article I Section 8 (page 4). I have also included for your convenience a separate copy of Schedule C which may be attached and referred to in the letter to the City from the United Steelworkers.

I believe the approach described above addresses the concerns you have raised about the City's PLA. We can begin including the new USW language in PLAs as soon as we have received the required affirmation from the United Steelworkers.

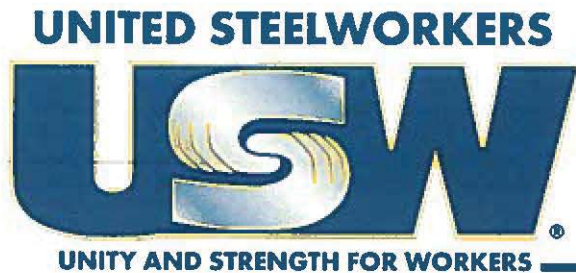
Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Lazer', with a long, sweeping horizontal line extending to the right.

Richard Lazer  
Deputy Mayor for Labor

# Exhibit G





Writer's Direct Dial: (412) 562 2548  
Writer's E-mail: [nkilbert@usw.org](mailto:nkilbert@usw.org)  
Writer's Direct Fax: (412) 562-2429

January 3, 2019

*Via first-class mail and email to [Rich.Lazer@phila.gov](mailto:Rich.Lazer@phila.gov)*

Richard Lazer  
Deputy Mayor for Labor  
205 City Hall  
Philadelphia, PA 19107

Deputy Mayor Lazer,

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("USW") is interested in becoming a party to City of Philadelphia Project Labor Agreements. I have reviewed your November 26, 2018, letter to Wally Zimolong regarding a revised PLA that would permit USW-represented contractors to utilize their workforces and their collective bargaining agreements with the USW on City projects.

The USW has a few questions related to the obligations contained in Schedule C of the PLA. The USW desires to increase the representation of minority men and women in construction occupations, and it would take seriously its obligations under Schedule C if it became a party to a City of Philadelphia PLA. The USW desires to know what participation goals under Schedule C have been found to be appropriate, both for the project workforce and for apprenticeship programs, for other unions and on other projects. The USW also wishes to understand what types of outreach efforts to minority men and women are regarded as appropriate and what alternatives to apprenticeship recruitment it should consider evaluating. Would it be possible for your office to answer these questions or to provide example reports of compliant activities by other unions (redacted, if necessary)?

Finally, the USW is concerned with the third party monitoring discussed in Schedule C. Could you indicate whether any current projects are subject to such monitoring, and how many projects have been subject to such monitoring since 2008? What range of costs could be expected if third party monitoring is implemented on a specific project?

Thank you for your efforts at facilitating USW participation in City of Philadelphia projects. We appreciate any information you could provide.

Sincerely yours,

Nathan Kilbert  
Assistant General Counsel



# Exhibit H

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROAD-CON, INC, et al., <div style="text-align: center;"><i>Plaintiffs,</i></div> <div style="text-align: center;">v.</div> CITY OF PHILADELPHIA, et al. <div style="text-align: center;"><i>Defendants.</i></div>	: : : : : : : : : :	Civil No: 2:19-cv-01667
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I, Richard Lazer, make this declaration and aver as follows:

1. I am the Deputy Mayor of Labor for the City of Philadelphia (the “City”).
  
2. In my capacity as Deputy Mayor of Labor, I am the primary point-of-contact for the City’s labor community and I am responsible for labor policy within the Philadelphia Department of Labor. I oversee the Department of Labor, which manages negotiations and grievance resolution with the City’s internal bargaining units.
  
3. In my capacity as Deputy Mayor of Labor, I am also responsible for reviewing and either approving or rejecting all recommendations for use of Project Labor Agreements (“PLAs”) submitted to the Mayor’s Office by City Agencies.
  
4. In my previous Declaration in this case, I stated that discussions with the United Steelworkers regarding their inclusion as a signatory to the City’s PLAs “were ultimately unsuccessful because the United Steelworkers believed that their organization could not comply with the diversity and inclusion goals of the City’s PLAs.” In this statement, I was attempting to reference and summarize a January 3, 2019 letter from the United Steelworkers to me, which specifically expressed concern regarding a provision of Schedule C to the City’s template PLA related to monitoring.

5. I understand that Plaintiffs in this case subsequently amended their pleadings and now claim that the City did not allow the United Steelworkers to sign on to the City's PLAs because the United Steelworkers' membership was not sufficiently diverse. This is incorrect.

6. To the contrary, the City's PLAs do not and have never required contractors or labor organizations to meet any percentage of minority or female employees or members.

7. Further, it is my understanding that the United Steelworkers shared the City's goal of increasing diversity in construction occupations. I had no concern regarding the United Steelworkers' ability or willingness to undertake best efforts to recruit a diverse membership.

8. Rather, the United Steelworkers expressed financial concerns about whether they could agree to a provision of the PLA related to monitoring, to which all other PLA signatories were bound. I understood the *Allan Myers* decision to mean that the City could not treat one signatory labor organization differently from the others, and I became concerned that the United Steelworkers would not agree to this subsection of Schedule C and that the manner in which we were attempting to include the United Steelworkers would not be in compliance with *Allan Myers*.

9. The City has not used a PLA on a City project since April 2019. If the City decides to use a PLA on a project in the future and it is a project for which the United Steelworkers may be an appropriate labor organization, the United Steelworkers will be provided an opportunity to sign on to the PLA before bids are solicited for the project.

10. I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Richard Lazer", with a stylized flourish at the end.

Date: December 6, 2021

---

RICHARD LAZER  
Philadelphia Deputy Mayor of Labor

# Exhibit I



Writer's Direct Dial: 412-562-2545  
Writer's Facsimile: 412-562-2574  
[djury@usw.org](mailto:djury@usw.org)

November 8, 2021

**All By Electronic Mail Only**

Walter Stephen Zimolong ([wally@zimolonglaw.com](mailto:wally@zimolonglaw.com))  
Zimolong LLC  
P.O. Box 552  
Villanova, PA 19085

Edward T. Kang ([ekang@kanghaggerty.com](mailto:ekang@kanghaggerty.com))  
Kang Haggerty & Fetbroyt LLC  
123 South Broad Street, Suite 1670  
Philadelphia, PA 19109

Amy Marie Kirby ([amy.kirby@phila.gov](mailto:amy.kirby@phila.gov))  
City of Philadelphia  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102

**RE: Road-Con, Inc. et al. v. City of Philadelphia et al.,  
Case No.: 2:19-cv-01667 (E.D. Pa.)**

Dear Mr. Zimolong, Ms. Kirby, and Mr. Kang:

On behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW"), I am writing to you in your capacity as counsel for the parties in *Road-Con, Inc. et al. v. City of Philadelphia et al.*, No. 2:19-cv-01667 (E.D. Pa.). USW recently learned of the Third Amended Complaint filed in this litigation, to which USW is not a party.<sup>1</sup> We write in the interest of ensuring that the USW's positions concerning the matters in dispute are not misrepresented or misunderstood.

For more than a decade, USW and its affiliated local unions have urged the City of Philadelphia ("City") to amend its project labor agreements ("PLAs") to permit contractors who have entered into collective bargaining agreements with the USW to bid on construction projects subject to a PLA. Those attempts have not been successful.

We remind the litigants that the Building and Construction Trades Department ("BCTD") and USW are parties to an agreement—known as the Harmony Agreement—that has the express purpose of ensuring that workers represented by a BCTD affiliate and workers represented by a USW affiliate can work side-by-side on construction projects in certain states, including Pennsylvania. Given that the Harmony Agreement bars BCTD affiliates from striking, picketing,

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<sup>1</sup> The plaintiffs are four contractors, each of which has employees represented by USW, and Scott Lacava, who, according to the Third Amended Complaint, was a member of a USW affiliate. Mr. Lacava is not and was not an employee or agent of USW and, as a consequence, does not speak for the USW.

Road-Con, Inc. letter To Parties

November 8, 2021

RE: Road-Con, Inc. et al. v. City of Philadelphia et al.,

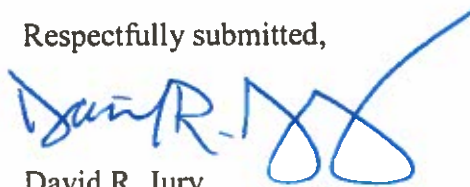
Page 2

or utilizing other economic-pressure tactics because a USW-represented contractor is performing work on a project, there is no viable pro-competitive justification for the City to agree to a PLA that prevents USW-represented contractors from submitting a bid. Thus, as alleged in Count 3 of the Third Amended Complaint, USW agrees with the plaintiffs that excluding USW-represented contractors from bidding on construction projects violates Pennsylvania and City of Philadelphia competitive-bidding laws. In the interest of resolving this matter, USW urges the City and all affected parties to consent to permitting USW-represented contractors participate in these and other City PLAs.

USW does not, however, agree that the PLAs violate the U.S. Constitution or federal law, as plaintiffs allege in Counts 1 and 2 of their Third Amended Complaint. We disagree that PLA provisions requiring recognition of signatory unions as the exclusive bargaining representative of all employees working on the project violates the First Amendment as these provisions do not impermissibly infringe on an individual's right to join (or right to refrain from joining) any labor union. We further disagree that the diversity-and-inclusion provisions of Schedule C of the PLAs violate the Fourteenth Amendment or 42 U.S.C. § 1981, and, consequently, we reject the premise for subsection (g) of the prayer for relief, which requests that the court "enjoin the defendants from disfavoring or discriminating against the United Steelworkers . . . on account of its willingness to agree to the city's diversity-and-inclusion goals."

None of the plaintiffs have standing to assert any harm on USW's behalf, let alone ascribe particular Constitutional or statutory theories to this labor organization. Rather, as USW made clear in Nathan Kilbert's January 3, 2019 letter to the City's Deputy Mayor for Labor Richard Lazer, USW strongly supports the efforts of the City and other jurisdictions to increase minority and female representation in construction occupations, and we remain willing to comply with the requirements of Schedule C as soon as we receive answers to the clarifying questions we sought nearly three years ago.

Respectfully submitted,



David R. Jury  
General Counsel

DRJ/cp

cc: *(All By E-mail Only)*  
Jonathan F. Mitchell ([jonathan@mitchell.law](mailto:jonathan@mitchell.law))  
Lydia M. Furst ([lydia.furst@phila.gov](mailto:lydia.furst@phila.gov))  
Susan Moon O ([so@khflaw.com](mailto:so@khflaw.com))

# Exhibit J

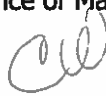


# MEMORANDUM

CITY OF PHILADELPHIA

## STREETS DEPARTMENT

TO : Rich Lazer, Deputy Mayor for Labor, Office of Mayor James F. Kenney

FROM : Carlton Williams, Streets Commissioner 

DATE : December 27, 2018

**SUBJECT : PLA Recommendation Request  
15<sup>th</sup> Street Bridge Rehab over City Branch Railroad Cut – Bid # 3858**

The Streets Department is in the process of finalizing the advertisement package for the subject public works contract and we would like to recommend the inclusion of a project labor agreement (PLA).

The scope of this project is for the demolition and removal of the superstructure and portions of north abutment; Removal and replacement of reinforced concrete deck over the entire structure; superstructure jacking and temporary support; removal and replacement of the caps of pier 1 and pier 2; utility relocation; and the installation of a curb barrier, security fence, street lighting, right-of-way fence, traffic lights, ADA-compliant curb ramps, and pavement markings required to facilitate two-way traffic on Callowhill Street; milling and repaving, as well as other related miscellaneous construction. The engineer's estimate for the project is \$7,731,830. Funding for this project will be 100 percent City Capital funds, including approximately \$1.6M City funds anticipated from Department of Public Property. A PLA form is attached.

We therefore request your review of our recommendation.

Attachment

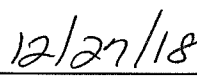
Cc:

J. Barry Davis, Law  
B. Bak, Airport  
M. Cintron, MDO  
V. Fleysh  
J. Janiszewski, Procurement  
R. Montanez  
A. Santaniello  
N. Sen  
M. Webb

## Streets Project Labor Agreement

Work Number: TBD	Bid Number: 3858	Date: 12/26/2018						
Title: 15th Street Bridge Rehab over City Branch Railroad Cut		Engineer's Estimate: \$7,712,368.00						
		Material Estimate: \$6,169,894.40						
		Labor Estimate: \$1,542,473.60						
<b>Description of Project:</b> Demolition and removal of the superstructure and portions of north abutment; Removal and replacement of reinforced concrete deck over the entire structure; superstructure jacking and temporary support; removal and replacement of the caps of pier 1 and pier 2; utility relocation; and the installation of a curb barrier, security fence, street lighting, right-of-way fence, traffic signals at several intersections, ADA-compliant curb ramps, and pavement markings required to facilitate two-way traffic on Callowhill Street; roadway resurfacing, as well as other related miscellaneous construction.								
<b>Anticipated Dates:</b>  <div style="display: flex; justify-content: space-between;"> <span>Bid Opening: <u>2/7/2019</u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Awarded: <u>5/15/2019</u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>NTP: <u>6/15/2019</u></span> </div> <div style="display: flex; justify-content: space-between;"> <span>Completion: <u>7/15/2020</u></span> </div>								
<b>List Anticipated Trades:</b> <table style="width: 100%; border: none;"> <tr> <td style="border-bottom: 1px solid black; width: 50%;">laborers</td> <td style="border-bottom: 1px solid black; width: 50%;">operating engineers</td> </tr> <tr> <td style="border-bottom: 1px solid black;">cement finishers</td> <td style="border-bottom: 1px solid black;">iron workers</td> </tr> <tr> <td style="border-bottom: 1px solid black;">teamsters</td> <td style="border-bottom: 1px solid black;">Painters</td> </tr> </table>			laborers	operating engineers	cement finishers	iron workers	teamsters	Painters
laborers	operating engineers							
cement finishers	iron workers							
teamsters	Painters							
<b>Describe Complexity of Work:</b> Coordination between contractors substantially complicates this project. The low bidder must coordinate access with Keating Inquirer Builders and several utility companies (Veolia, PECO, Verizon). In addition, the work is to be completed in stages, and because most of the steel members are remaining in place, there will be significant jacking of the bridge to accomodate pier and abutment work.								
<b>Describe any Time Constraints:</b> Work must be completed prior to Police move-in by end of calendar year 2020.								
<b>Other Factors:</b> None								
<b>Streets Recommendation:</b>  Include a PLA in the Contract								

  
 Streets Commissioner Signature

  
 Date

**15TH STREET BRIDGE REHABILITATION  
COST ESTIMATE  
FOR  
CITY OF PHILADELPHIA**

ITEM NO.	ITEM NAME	QUAN	UOM	UNIT PRICE	COST
0201-0001	CLEARING AND GRUBBING	1	LS	\$ 20,000.00	\$ 20,000.00
0203-0001	CLASS 1 EXCAVATION	28	CY	\$ 150.00	\$ 4,200.00
0203-0004	CLASS 1B EXCAVATION	41	CY	\$ 68.00	\$ 2,788.00
0204-0100	CLASS 3 EXCAVATION	100	CY	\$ 56.00	\$ 5,600.00
0220-0001	FLOWABLE BACKFILL, TYPE A	25	CY	\$ 100.00	\$ 2,500.00
0350-0104	SUBBASE 4" DEPTH (NO. 2A)	111	SY	\$ 31.00	\$ 3,441.00
0350-0106	SUBBASE 6" DEPTH (NO. 2A)	107	SY	\$ 60.00	\$ 6,420.00
0411-0482	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA WEARING COURSE, PG 64-22, 0.3 TO < 3 MILLION ESALS, 9.5 MM MIX, 1 1/2" DEPTH, SRL-H	11084	SY	\$ 15.00	\$ 166,260.00
0411-1592	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA WEARING COURSE (LEVELING), PG 64-22, 3 TO < 10 MILLION ESALS, 9.5 MM MIX, SRL-H	10.5	Ton	\$ 150.00	\$ 1,575.00
0411-6450	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA BINDER COURSE, PG 64-22 0.3 TO <3 MILLION ESALS, 19.0 MM MIX, 2 1/2" DEPTH	82	SY	\$ 37.00	\$ 3,034.00
0411-6470	SUPERPAVE ASPHALT MIXTURE DESIGN, WMA BINDER COURSE, PG 64-22, 0.3 TO < 3 MILLION ESALS, 19.0 MM MIX	3.5	Ton	\$ 200.00	\$ 700.00
0460-0001	BITUMINOUS TACK COAT	10977	SY	\$ 0.35	\$ 3,841.95
0501-0028	PLAIN CEMENT CONCRETE PAVEMENT, 8" DEPTH	131	SY	\$ 125.00	\$ 16,375.00
0505-0001	BRIDGE APPROACH SLAB	48	SY	\$ 800.00	\$ 38,400.00
0608-0001	MOBILIZATION	1	LS	\$ 280,000.00	\$ 280,000.00
4609-0002	INSPECTOR'S FIELD OFFICE AND INSPECTION FACILITIES, TYPE A INDOOR LAVATORY AND ADDITIONAL EQUIPMENT	1	LS	\$ 35,000.00	\$ 35,000.00
0609-0009	EQUIPMENT PACKAGE	1	LS	\$ 5,000.00	\$ 5,000.00
4624-0001	RIGHT-OF-WAY FENCE TYPE 1 WITH ARMS, 8' HEIGHT	50	LF	\$ 28.50	\$ 1,424.91
0630-0001	PLAIN CEMENT CONCRETE CURB	91	SY	\$ 35.50	\$ 3,230.50
0630-0010	PLAIN CEMENT CONCRETE CURB, INCLUDING REMOVAL OF EXISTING CURB	56	LF	\$ 100.00	\$ 5,600.00
0643-0001	TEMPORARY CONCRETE BARRIER, STRUCTURE MOUNTED	51	LF	\$ 120.00	\$ 6,120.00
0644-0001	TEMPORARY CONCRETE BARRIER, STRUCTURE MOUNTED, RESET	51	LF	\$ 60.00	\$ 3,060.00

4676-0002	CEMENT CONCRETE SIDEWALK SEALED JOINTS	111	SY	\$ 150.00	\$ 16,650.00
4686-0050	CONSTRUCTION SURVEYING, TYPE D PHILADELPHIA STANDARD	1	LS	\$ 15,000.00	\$ 15,000.00
0688-0002	MICROCOMPUTER WITH BATTERY BACKUP SYSTEM, TYPE A	1	LS	\$ 5,000.00	\$ 5,000.00
0689-0003	CPM SCHEDULE	1	LS	\$ 7,500.00	\$ 7,500.00
0845-0001	UNFORESEEN WATER POLLUTION CONTROL	5000	DOLL	\$ 1.00	\$ 5,000.00
0849-0001	ROCK CONSTRUCTION ENTRANCE MODIFIED	2	EACH	\$ 3,000.00	\$ 6,000.00
0855-0003	PUMPED WATER FILTER BAG	1	EACH	\$ 350.00	\$ 350.00
0855-0004	REPLACEMENT PUMPED WATER FILTER BAG	2	EACH	\$ 300.00	\$ 600.00
0860-0000	INLET FILTER BAG FOR TYPE M INLET	1	EACH	\$ 200.00	\$ 200.00
0860-0002	INLET FILTER BAG FOR TYPE C INLET	3	EACH	\$ 200.00	\$ 600.00
0867-0012	COMPOST FILTER SOCK, 12" DIAMETER	300	LF	\$ 10.00	\$ 3,000.00
4901-0001	MAINTENANCE AND PROTECTION OF TRAFFIC DURING CONSTRUCTION PHILADELPHIA STANDARD	1	LS	\$ 275,000.00	\$ 275,000.00
0910-4065	CONDUCTOR	150	LF	\$ 5.00	\$ 750.00
0910-4113	AWG 2 ABOVE GROUND CABLE, COPPER, 1 CONDUCTOR	450	LF	\$ 4.00	\$ 1,800.00
0910-5175	2" EXPOSED CONDUIT	150	LF	\$ 41.00	\$ 6,150.00
0910-5255	2" CONDUIT IN STRUCTURE	12	LF	\$ 23.00	\$ 276.00
0910-7210	TESTING OF ENTIRE LIGHT SYSTEM	1	LS	\$ 3,900.00	\$ 3,900.00
0956-0500	PEDESTRIAN PUSH BUTTON	2	EA	\$ 500.00	\$ 1,000.00
0960-0005	6" WHITE HOT THERMOPLASTIC PAVEMENT MARKINGS	6000	LF	\$ 2.00	\$ 12,000.00
0960-0021	24" WHITE HOT THERMOPLASTIC PAVEMENT MARKINGS	3350	LF	\$ 8.00	\$ 26,800.00
0960-0101	WHITE HOT THERMOPLASTIC LEGEND, "ONLY", 8' - 0"	5	EA	\$ 200.00	\$ 1,000.00
0960-0118	WHITE HOT THERMOPLASTIC LEGEND, "BICYCLE WITH RIDER", 8' - 0" X 4'-0"	4	EA	\$ 370.00	\$ 1,480.00
0960-0222	WHITE HOT THERMOPLASTIC LEGEND, "RIGHT ARROW", 12' - 0" X 3' - 0"	3	EA	\$ 150.00	\$ 450.00
0960-0224	WHITE HOT THERMOPLASTIC LEGEND, "LEFT ARROW", 12' - 0" X 3' - 0"	2	EA	\$ 150.00	\$ 300.00
0960-0228	WHITE HOT THERMOPLASTIC LEGEND, "THRU AND RIGHT ARROW", 20' - 0" X 3' - 7"	1	EA	\$ 200.00	\$ 200.00
0963-0001	PAVEMENT MARKING REMOVAL	550	SF	\$ 7.00	\$ 3,850.00
1001-0010	CLASS A CEMENT CONCRETE	3	CY	\$ 820.00	\$ 2,460.00
1001-0730	SELECTED BORROW EXCAVATION, STRUCTURAL BACKFILL	104	CY	\$ 75.00	\$ 7,800.00
1001-0910	CLASS AA CEMENT CONCRETE	1	CY	\$ 1,690.00	\$ 1,690.00
1001-0960	CLASS AAAP CEMENT CONCRETE	310	CY	\$ 1,375.00	\$ 426,250.00

1002-0052	REINFORCEMENT BARS, EPOXY COATED	112430	LB	\$ 1.89	\$ 212,492.70
5017-0000	PRESSURE MORTAR POINTING, REPOINT EXISTING	26	LF	\$ 575.00	\$ 14,950.00
5018-0050	REMOVAL OF PORTION OF EXISTING BRIDGE IN URBAN AREA	1	LS	\$ 250,000.00	\$ 250,000.00
1019-0040	PROTECTIVE COATING FOR REINFORCED CONCRETE SURFACES (PENETRATING SEALERS, REINFORCED CONCRETE SUBSTRUCTURE SURFACES)	138	SY	\$ 20.00	\$ 2,760.00
1019-0050	PROTECTIVE COATING FOR REINFORCED CONCRETE SURFACES (PENETRATING SEALERS, BRIDGE SUPERSTRUCTURE)	1568	SY	\$ 18.00	\$ 28,224.00
1026-0015	NEOPRENE STRIP SEAL DAM, (3" MOVEMENT)	52	LF	\$ 495.00	\$ 25,740.00
1056-0100	FABRICATED STRUCTURAL STEEL	55823	LB	\$ 9.00	\$ 502,407.00
1056-0470	SHEAR CONNECTORS	3092	EA	\$ 6.00	\$ 18,552.00
5070-0150	PAINTING EXISTING STRUCTURAL STEEL USING ORGANIC ZINC COATING SYSTEMS	1	LS	\$ 600,000.00	\$ 600,000.00
1091-0331	EPOXY INJECTION CRACK SEAL	67	LF	\$ 74.00	\$ 4,958.00
9000-0001	LED ROADWAY LUMINAIRE	3	EA	\$ 850.00	\$ 2,550.00
9000-0002	REMOVE STREET LIGHT POLE	3	EA	\$ 2,900.00	\$ 8,700.00
9000-0003	STREET LIGHT POLE, 15" BOLT CIRCLE	3	EA	\$ 4,000.00	\$ 12,000.00
9000-0004	STREET LIGHTING BRACKET, 6 FEET	3	EA	\$ 500.00	\$ 1,500.00
9000-0005	REPLACE EXISTING BEARING	72	EA	\$ 3,600.00	\$ 259,200.00
9000-0006	STEEL REPAIR	24280	LB	\$ 18.00	\$ 437,040.00
9000-0007	METAL CURB BARRIER	239	LF	\$ 230.00	\$ 54,970.00
9000-0008	REPLACE LONGITUDINAL JOINT	252	LF	\$ 725.00	\$ 182,700.00
9000-0009	SUBSTRUCTURE CONCRETE REPAIR, TYPE 2	361	SF	\$ 120.00	\$ 43,320.00
9000-0010	CLEAN BRIDGE SEATS	1	LS	\$ 5,100.00	\$ 5,100.00
9000-0013	TEMPORARY SHIELDING	1	LS	\$ 300,000.00	\$ 300,000.00
9000-0014	JACKING BRIDGE SUPERSTRUCTURE WITH TEMPORARY SUPPORT OF STRUCTURES	1	LS	\$ 1,050,000.00	\$ 1,050,000.00
9000-0015	SOUTH ABUTMENT RECONSTRUCTION	1	LS	\$ 46,000.00	\$ 46,000.00
9000-0016	REPLACE CONCRETE PIER CAP AT PIER 2	1	LS	\$ 50,000.00	\$ 50,000.00
9000-0017	NORTH ABUTMENT RECONSTRUCTION	1	LS	\$ 175,000.00	\$ 175,000.00
9000-0018	SECURITY FENCE	278	LF	\$ 90.00	\$ 25,020.00
9000-0019	NEOPRENE STRIP SEAL DAM, (4.5" MOVEMENT)	52	LF	\$ 655.00	\$ 34,060.00
9000-0020	DOWEL HOLES	474	EA	\$ 46.00	\$ 21,804.00
9000-0021	TEMPORARY SUPPORT OF UTILITIES	1	LS	\$ 75,000.00	\$ 75,000.00
9000-0022	POWER SUPPLY (PECO COORDINATION)	12000	DOLLA	\$ 1.00	\$ 12,000.00
9000-0023	CONTAINMENT	1	LS	\$ 250,000.00	\$ 250,000.00
9000-0024	WORKER HEALTH AND SAFETY	1	LS	\$ 100,000.00	\$ 100,000.00
9000-0025	BRONZE INSCRIPTION TABLET	2	EA	\$ 2,000.00	\$ 4,000.00
9000-0101	REPLACEABLE DETECTABLE WARNING SURFACE	144	SF	\$ 40.00	\$ 5,760.00
9000-0107	RELOCATE FIRE HYDRANT	1	EA	\$ 12,000.00	\$ 12,000.00

9000-0153	INLET PROTECTION, CURBED	9	EA	\$ 250.00	\$ 2,250.00
9000-0326	RESET PWD MANHOLE FRAME AND COVER (36" AND SMALLER)	10	EA	\$ 1,000.00	\$ 10,000.00
9000-0327	RESET PWD MANHOLE FRAME AND COVER (GREATER THAN 36")	10	EA	\$ 1,200.00	\$ 12,000.00
9000-0362	RESET CITY INLET TOP	9	EA	\$ 200.00	\$ 1,800.00
9000-0365	REBUILD INLET	5	CY	\$ 750.00	\$ 3,750.00
9000-0406	FIBER OPTIC ETHERNET COMMUNICATIONS APPLIANCE 1G LAYER, 2 SWITCH	4	EA	\$ 5,000.00	\$ 20,000.00
9000-0408	FIBER OPTIC PATCH CABLE, LC CONNECTORS	4	EA	\$ 50.00	\$ 200.00
9000-0410	SYSTEM SUPPORT EQUIPMENT	1	LS	\$ 10,000.00	\$ 10,000.00
9000-0411	OPERATIONAL SUPPORT PERIOD	1	LS	\$ 10,000.00	\$ 10,000.00
9000-0451	ATMS INTEGRATION AND SOFTWARE MODIFICATIONS, CITY OF PHILADELPHIA	26000	DOLLA	\$ 1.00	\$ 26,000.00
9000-0600	UNFORSEEN CONSTRUCTION	1	DOLLA	\$ 60,000.00	\$ 60,000.00
9000-0633	MILLING, FULL WIDTH (MATERIAL RETAINED BY CONTRACTOR)	10895	SY	\$ 5.00	\$ 54,475.00
9000-0637	MILLING, ADJUSTMENT AREA (MATERIAL RETAINED BY CONTRACTOR)	1500	SY	\$ 10.00	\$ 15,000.00
9000-0790	UNIFORM TRAFFIC CONTROL OFFICERS	1	DOLLA	\$ 50,000.00	\$ 50,000.00
9000-0900	SCHOOL FLASHER ASSEMBLY	1	EA	\$ 4,000.00	\$ 4,000.00
9000-0962	WIRELESS CMMUNICATION SYSTEM	3	EA	\$ 8,900.00	\$ 26,700.00
9000-0964	WIRELESS COMMUNICATIONS SYSTEM SITE SURVEY	1	LS	\$ 41,000.00	\$ 41,000.00
9000-1000	EXCAVATION FOR WATER MAINS	90	CY	\$ 57.00	\$ 5,130.00
9000-1001	6" DIAMETER DUCTILE IRON PIPE, PUSH-ON JOINT	10	LF	\$ 70.00	\$ 700.00
9000-1002	8" DIAMETER DUCTILE IRON PIPE, PUSH-ON JOINT	120	LF	\$ 94.00	\$ 11,280.00
9000-1003	8" DIAMETER 0.25" THICK STEEL PIPE AND APPURTENANCE MATERIALS, INCLUDING COUPLINGS AND FROST PROTECTION	270	LF	\$ 225.00	\$ 60,750.00
9000-1004	COMPACT DUCTILE IRON FITTINGS, STANDARD PRESSURE	0.5	TON	\$ 5,000.00	\$ 2,500.00
9000-1005	6" STANDARD PRESSURE GATE VALVE WITH STANDARD VALVE BOX	1	EA	\$ 4,150.00	\$ 4,150.00
9000-1006	8" STANDARD PRESSURE GATE VALVE WITH STANDARD VALVE BOX	2	EA	\$ 4,940.00	\$ 9,880.00
9000-1007	1" INCH MANUAL AIR VALVE WITH STEEL CHAMBERS	1	EA	\$ 2,220.00	\$ 2,220.00
9000-1008	STANDARD PRESSURE FIRE HYDRANT WITH CENTER COMPRESSION LOCK	1	EA	\$ 7,820.00	\$ 7,820.00
9000-1009	REMOVE FIRE HYDRANT AND VALVE, STANDARD PRESSURE	1	EA	\$ 750.00	\$ 750.00
9000-1010	REMOVE HIGH PRESSURE FIRE HYDRANT AND VALVE	2	EA	\$ 1,165.00	\$ 2,330.00
9000-1011	CONCRTE ANCHOR	8	CY	\$ 81.00	\$ 648.00

9000-1012	FURNISHING, PLACING, AND COMPACTING SELECT BACKFILL MATERIALS (2RC)	110	CY	\$ 17.00	\$ 1,870.00
9000-1013	INSTALLATION OF PWD FACILITIES ON STRUCTURES	1	LS	\$ 20,000.00	\$ 20,000.00
9000-1014	EXCAVATION FOR PIPE SEWERS INCLUDING SHEATING AND SHORING	20	CY	\$ 178.00	\$ 3,560.00
9000-1015	15 INCH INLET CONNECTION	15	LF	\$ 206.00	\$ 3,090.00
9000-1016	FILLING ABANDONED MANHOLES	1	EA	\$ 465.00	\$ 465.00
9000-1017	4 FOOT OPEN MOUTH GRATE INLET	1	EA	\$ 8,425.00	\$ 8,425.00
9000-1200	REMOVE STREET LIGHT ARM & LUMINAIRE FROM WOOD POLE	1	EA	\$ 750.00	\$ 750.00
9000-1221	RESET PWD WATER VALVE BOX	10	EA	\$ 500.00	\$ 5,000.00
9000-1230	REPLACE PWD WATER VALVE FRAME AND COVER	10	EA	\$ 400.00	\$ 4,000.00
9000-1512	STREET LIGHT LUMINAIRE	9	EA	\$ 1,200.00	\$ 10,800.00
9000-1593	12' STREET LIGHTING BRACKET	9	EA	\$ 600.00	\$ 5,400.00
9000-2001	CONDUIT TRENCHING AND RESTORATION	873	LF	\$ 200.00	\$ 174,600.00
9000-2005	PVC STREETLIGHTING CONDUIT, 2"	560	LF	\$ 8.00	\$ 4,480.00
9000-2007	PVC STREETLIGHT CONDUIT ELBOW, 2"	31	EA	\$ 30.00	\$ 930.00
9000-2009	PVC TRAFFIC CONDUIT, 3"	763	LF	\$ 10.00	\$ 7,630.00
9000-2011	PVC TRAFFIC CONDUIT, 3" ELBOW	36	EA	\$ 45.00	\$ 1,620.00
9000-2017	COMPOSITE JUNCTION BOX, 12" X 18" X 12"	6	EA	\$ 900.00	\$ 5,400.00
9000-2019	CIRCULAR COMPOSITE JUNCTION BOX, 39" OD X 24"	3	EA	\$ 4,200.00	\$ 12,600.00
9000-2023	TRAFFIC C-POST, 20'	6	EA	\$ 3,500.00	\$ 21,000.00
9000-2024	PECO SERVICES	2	EA	\$ 1,800.00	\$ 3,600.00
9000-2025	TRAFFIC D-POLE	9	EA	\$ 4,000.00	\$ 36,000.00
9000-2026	UTILITY MANHOLE MODIFICATION	2	EA	\$ 1,700.00	\$ 3,400.00
9000-2027	STANDARD FOUNDATION (D-POLE)	9	EA	\$ 3,500.00	\$ 31,500.00
9000-2033	TRAFFIC SIGNAL SUPPORT, 30' MAST ARM	3	EA	\$ 9,600.00	\$ 28,800.00
9000-2045	STANDARD FOUNDATION, TYPE 1 (35' OR LESS)	3	EA	\$ 3,800.00	\$ 11,400.00
9000-2051	PEDESTRIAN SIGNAL HEAD, COUNTDOWN	22	EA	\$ 900.00	\$ 19,800.00
9000-2055	SOLID STATE CONTROLLER CABINET, TYPE 333	2	EA	\$ 30,000.00	\$ 60,000.00
9000-2056	SOLID STATE CONTROLLER CABINET, TYPE 336	1	EA	\$ 30,000.00	\$ 30,000.00
9000-2059	TRAFFIC SIGNAL CABLE, 5 CONDUCTOR	574	LF	\$ 5.00	\$ 2,870.00
9000-2061	TRAFFIC SIGNAL CABLE, 30 CONDUCTOR	889	LF	\$ 15.00	\$ 13,335.00
9000-2063	ELECTRICAL SERVICE WIRE - #6 AWG	790	LF	\$ 8.00	\$ 6,320.00
9000-2065	TRIPLEX SERVICE CABLE	30	LF	\$ 6.00	\$ 180.00
9000-2067	AERIAL ELECTRICAL SERVICE CONNECTION	2	EA	\$ 1,100.00	\$ 2,200.00
9000-2070	COMMUNICATION CABLE, FIBER OPTIC, 48 STRAND, UNDERGROUND	711	LF	\$ 8.00	\$ 5,688.00
9000-2072	REMOVAL OF TRAFFIC SIGNS	16	EA	\$ 50.00	\$ 800.00
9000-2074	METRO STREET NAME SIGN 12" X 48"	8	EA	\$ 650.00	\$ 5,200.00

9000-2075	METRO STREET NAME SIGN 12" X 36"	2	EA	\$ 650.00	\$ 1,300.00
9000-2076	METRO/ONEWAY STREET NAME SIGN 24" X 36"	2	EA	\$ 700.00	\$ 1,400.00
9000-2077	OVERHEAD STREET NAME SIGN	12	SF	\$ 100.00	\$ 1,200.00
9000-2079	3-SECTION, 12" TRAFFIC SIGNAL HEAD, POLE MOUNT	20	EA	\$ 1,500.00	\$ 30,000.00
9000-2084	VIDEO DETECTION SYSTEM, 1 CAMERA	1	EA	\$ 7,000.00	\$ 7,000.00
9000-2088	REMOVAL OF TRAFFIC SIGNAL EQUIPMENT PER INTERSECTION	4	EA	\$ 5,000.00	\$ 20,000.00
9000-2089	REMOVE STREET LIGHT & FOUNDATION	4	EA	\$ 3,500.00	\$ 14,000.00
9000-2093	TRAFFIC SIGN, POST MOUNTED	23	EA	\$ 150.00	\$ 3,450.00
9000-5001	DESIGN OF CURB RAMPS (BY QUADRANT)	10	EA	\$ 2,000.00	\$ 20,000.00
9000-5002	CONSTRUCTION OF ADA RAMPS (BY QUADRANT), CONCRETE	10	EA	\$ 20,000.00	\$ 200,000.00
9073-2001	DISPOSAL OF BRIDGE WASTE	1	LS	\$ 150,000.00	\$ 150,000.00
				<b>TOTAL</b>	\$ 7,731,830.06



# Exhibit K

**PNE – Runway 6-24 Pavement Rehabilitation – Package – 2**  
**PROJECT #: PNE-0340.24, BID #:6478**  
**Construction Trades Analysis**  
**MEMORANDUM**

DATE: 12/11/2018  
TO: Keith Brune  
FROM: Amna Ali, PMP  
RE: Construction Trades Analysis

---

**Purpose:**

Evaluate the anticipated trades associated with the construction activity for Project – PNE Runway 6-24 Pavement Rehabilitation – Package – 2

**Scope of the Project:**

This project involves the pavement rehabilitation of approximately 2200 feet of Runway 6-24 from the southerly portion of Package – 1 including Taxiway J and Taxiway C. It also includes Taxiway A as a part of Bid Alternate # 1. The existing Runway pavement is in a distressed condition. This project will eliminate the distressed pavement and also modify the taxiway connectors to the latest FAA standards. In addition to the pavement rehabilitation, it also involves installation of electrical components like runway edge lights, signs and sign foundations, duct work. This project will also entail pavement markings and runway grooving.

**Evaluation:**

The engineer's estimate for this project is \$8.1 M (BASE BID) and \$1.5 M in Bid Alternate #1, exceeding PLA (Executive Order No. 8-15) threshold of \$3,000,000; thus, a formal evaluation is needed.

The evaluation of anticipated trades associated with the construction activity for the above project compares the activity and associated cost total to the anticipated trades necessary to complete the activity. Typically, airport related construction falls under the trade guidelines for heavy/highway construction given the similarities of materials and placement techniques. The heavy/highway construction trades involved in airport related construction typically include the following:

- |                  |   |
|------------------|---|
| 1. Carpenters    | (United Brotherhood of Carpenters)                |
| 2. Cement Masons | (Cement Masons and Plasterers Union)              |
| 3. Electricians  | (International Brotherhood of Electrical Workers) |
| 4. Laborers      | (Laborers Union)                                  |
| 5. Operators     | (International Union of Operating Engineers)      |
| 6. Teamsters     | (International Brotherhood of Teamsters)          |

The current construction cost estimate for this project is \$9.6 million (**including Base Bid and Bid Alternate # 1**). In general, for heavy/highway construction, labor costs represents 15 to 20 percent of a project item's unit price. The labor cost associated with trucking and barging materials typically represents an additional 15 to 30 percent of a project item's unit price. With the abundance of electrical and civil earthwork and paving work associated with this package, a total of 50 percent was used to determine the anticipated labor cost.

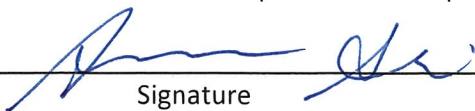
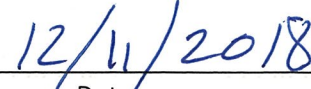
Table 1 presents the major construction activity and a breakdown of the anticipated construction value of each of these major activities. The table also includes the trade involvement and associated labor costs anticipated for each major activity.

**Table 1 – Project Trades for Runway 6-24 Pavement Rehabilitation**

Major Project Activity	Anticipated Construction Value (millions)	Anticipated Trade Involvement	Anticipated Labor Cost (millions)
<u>General Administrative Items</u> - Mobilization - Safety and Security	\$0.7	Teamsters, Operators and Laborers	\$0.35
<u>Earthwork and Paving</u> - Excavation - Site Grading - Removal and Disposal of Asphalt Pavement - Asphalt Paving - Airfield Markings	\$6.5	Teamsters, Operators, Laborers, Carpenters	\$3.25
<u>Electrical Construction Items</u> - Removal of existing electrical structures - Installation of signs - Installation of conduits - Installation of signs - Installation of PAPIs	\$2.4	Electricians, Cement Masons	\$1.2
<b>Total</b>	<b>\$9.6</b>		<b>\$4.8</b>

**PLA Recommendation:**

This project meets the criteria in Executive Order 8-15 and requires phasing to allow aircraft to move in a safe and timely manner, with minimal disruptions, across the PNE airfield. In order to support the safe and efficient completion of the project by ensuring the availability of effective mechanism for dispute resolution among the trades, the Division of Aviation recommends that a PLA be established for this important airfield project.

Signature Date

# Exhibit L

Albert D. Hoffman  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -  
ROAD-CON, INC., NESHAMINY : CIVIL ACTION  
CONSTRUCTORS, INC., LOFTUS : NO. 2:19-cv-01667-JS  
CONSTRUCTION, INC., :  
PKF-MARK III, and SCOTT A. :  
LACAVA :  
Plaintiffs, :  
-V- :  
CITY OF PHILADELPHIA and :  
JAMES KENNEY, IN HIS :  
OFFICIAL CAPACITY AS MAYOR :  
OF THE CITY OF PHILADELPHIA :  
Defendants. :

- - -  
Friday, September 25, 2020  
- - -

ORAL ZOOM DEPOSITION OF ALBERT D.  
HOFFMAN, taken pursuant to the Subpeona, held remotely  
and by Zoom videoconference in Pennsylvania, commencing  
at 9:00 a.m., before SHARON RICCI, RMR, CRR - Notary  
Public there being present.

Albert D. Hoffman  
September 25, 2020

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A P P E A R A N C E S:

ZIMOLONG, LLC

BY: WALTER S. ZIMOLONG, ESQUIRE  
P.O. Box 552  
Villanova, PA 19085  
(215) 665-0842  
wally@zimolonglaw.com  
Representing the Plaintiffs

KANG, HAGGERTY & FETBROYT, LLC

BY: MICHAEL SCOTT WEINERT, ESQUIRE  
123 S. Broad Street, Suite 1670  
Philadelphia, PA 19109  
(215) 525-5850  
mweinert@khflaw.com  
Representing the Intervenors

CITY OF PHILADELPHIA LAW DEPARTMENT

BY: LYDIA FURST, ESQUIRE  
AMY KIRBY, ESQUIRE  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102  
(215) 683-3573  
lydia.furst@phila.gov  
amy.kirby@phila.gov  
Representing the Defendants

ALSO PRESENT: Karli Ramirez, Intern for City of Phila  
Thomas Isenberg, Rep for PKF-Mark III

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I N D E X

WITNESS	PAGE
ALBERT HOFFMAN (Witness sworn)	6
EXAMINATION BY:	
MS. FURST:	6, 33
MR. WEINERT:	31
MR. ZIMOLONG:	36

- - -

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
HOFFMAN 1	STATUS CONTRACT SHEET	12
HOFFMAN 6	AFFIDAVIT	24

- - -

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1 COURT REPORTER: Counsel, I will  
2 read a stipulation into the record. Please  
3 bear with me, as it is long.

4 It is hereby stipulated and agreed  
5 by and between counsel for all parties present  
6 that pursuant to 231 Pa. Code 4002 this  
7 deposition is being conducted by Zoom  
8 conference, that the court reporter, all  
9 counsel, and the witness are all in separate  
10 remote locations and participating via Zoom  
11 conference meeting under the control of  
12 Strehlow & Associates Court Reporting Service,  
13 that the officer administering the oath to the  
14 witness need not be in the place of the  
15 deposition and the witness shall be sworn in  
16 remotely by the court reporter after  
17 confirming the witness's identity, that this  
18 Zoom conference will not be recorded unless  
19 previously noticed as a videotaped deposition  
20 and that any recording without the express  
21 written consent of all parties shall be  
22 considered unauthorized, in violation of law,  
23 and shall not be used for any purpose in this  
24 litigation or otherwise.

25 It is further stipulated that



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1 exhibits may be marked by the attorney  
2 presenting the exhibit to the witness, and  
3 that a copy of any exhibit presented to a  
4 witness shall be emailed to or otherwise in  
5 possession of all counsel prior to any  
6 questioning of a witness regarding the exhibit  
7 in question. All parties shall bear their own  
8 costs in the conduct of this deposition by  
9 Zoom conference.

10 So stipulated, counsel?

11 MS. FURST: Lydia Furst, counsel  
12 for the City of Philadelphia. And, yes, I  
13 agree to the stipulation.

14 MR. WEINERT: Michael Weinert,  
15 counsel for intervenors. Yes, I agree to the  
16 stipulation.

17 MR. ZIMOLONG: And counsel for  
18 plaintiffs, Wally Zimolong. We stipulate.

19 MS. KIRBY: And Amy Kirby, attorney  
20 for the City of Philadelphia. We agree to the  
21 stipulation.

22 MR. ZIMOLONG: Real quick, Lydia is  
23 on and Amy is on as well. Just to be clear,  
24 there's only one attorney doing the  
25 questioning today?

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1 MS. KIRBY: Yes. Lydia is handling  
2 this morning, I'm going to be handling this  
3 afternoon.

4 MR. ZIMOLONG: Fair enough.

5 ...ALBERT HOFFMAN, after having  
6 been first duly sworn, was examined and  
7 testified as follows:

8 - - -

9 DIRECT EXAMINATION

10 - - -

11 BY MS. FURST:

12 Q. Good morning, Mr. Hoffman. My name is Lydia  
13 Furst, I'm an attorney for the City of Philadelphia, and  
14 I'm representing the defendants in this case, along with  
15 my co-counsel, Amy Kirby.

16 Mr. Hoffman, have you ever been deposed  
17 before?

18 A. Yes.

19 Q. Okay. So I'll just run through the ground rules  
20 really, really quickly. As you already know, the court  
21 reporter is here taking down everything everyone says,  
22 so rather than nodding your head yes or no, you'll need  
23 to provide a verbal answer to questions.

24 We should still, even though we're doing this  
25 remotely, try to avoid crosstalk so that everything is

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1 clear to the court reporter. So I will do my best to  
2 avoid interrupting you, and I just ask that you do the  
3 same for me.

4 If, at any time, you need to take a break,  
5 please just let us know and we can do that. I would  
6 only ask that you not take a break in the middle of a  
7 question pending, so wait until you've answered the  
8 question and ask to take a break, and we can do that at  
9 any time.

10 Does that all sound okay?

11 A. That's fine.

12 Q. Okay. And, Mr. Hoffman, is there any reason that  
13 you cannot answer questions truthfully today?

14 A. No.

15 Q. Okay. What is your current job?

16 A. I'm the president of Road-Con Incorporated, heavy  
17 and highway contractor in West Chester, PA.

18 Q. And how long have you held that position at  
19 Road-Con?

20 A. As president, for approximately three years.  
21 Overall, I've been with the company 25 years.

22 Q. And just briefly, can you describe for me what  
23 your duties are as president of Road-Con?

24 A. Overall supervision and oversight of the entire  
25 company's operations, including procurement, management

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1 of the projects, management of our resources and shop,  
2 and general accounting functions.

3 Q. And what position did you hold prior to  
4 president?

5 A. Vice president.

6 Q. Okay. And can you again just briefly describe  
7 what your duties were as vice president of Road-Con?

8 A. Same overall duties except I had a superior at  
9 that time.

10 Q. Okay. And how long were you in the position of  
11 vice president for?

12 A. Approximately 20 years.

13 Q. As president, do you have a role in choosing  
14 which contracts Road-Con will bid on?

15 A. I do.

16 Q. And as vice president, did you also have a role  
17 in choosing which contracts Road-Con bids on?

18 A. Yes, I did.

19 Q. Going back to your role as president, is there  
20 anyone else at Road-Con who's involved in the  
21 decision-making upon choosing which projects Road-Con  
22 will bid on?

23 A. My chief estimator, Murray Blaker, would suggest  
24 projects for us to target, however, I have the final say  
25 whether we move ahead or not.

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1 Q. Okay. And then in your role as vice president,  
2 who else was involved in making decisions as to which  
3 projects Road-Con would bid on?

4 A. The current president at that time, Edward J.  
5 McKenna.

6 Q. And was the chief estimator also involved in  
7 decision-making around bidding while your were vice  
8 president?

9 A. At the time he came on board, which was  
10 approximately four to five years ago, yes, at that point  
11 he was involved. Prior to that, he was not in  
12 the -- the position was not here at Road-Con.

13 Q. Okay. So just to clarify, until five years ago,  
14 there was no estimator at Road-Con?

15 A. No, there was no chief estimator's position. I  
16 would take care of the estimating, along with other  
17 project management staff, and then we added the position  
18 of chief estimator.

19 Q. When did Road-Con commence business?

20 A. The company was incorporated in 1993.

21 Q. And sorry if I'm doing the math wrong, but does  
22 that mean you've been with the company since it was  
23 founded?

24 A. Shortly thereafter, yes.

25 Q. Is Road-Con a member of the Pennsylvania Heavy

Albert D. Hoffman  
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1 and Highway Contractors Bargaining Association?

2 A. We are.

3 Q. And when did Road-Con become a member of that  
4 association?

5 A. Upon inception of the company, in 1993. The  
6 company was a buy -- or transfer from another company,  
7 Rocon, R-O-C-O-N. That company was a member of the  
8 Bargaining Association, therefore, the new company  
9 continued in that fashion.

10 Q. Okay. And is Road-Con still a member of that  
11 association?

12 A. Yes.

13 Q. Were there ever any lapses in Road-Con's  
14 membership in that association?

15 A. No.

16 Q. So you've mentioned the term "heavy and highway."  
17 Can you just describe for me what type of  
18 construction work does that term include?

19 A. That would include road and street construction,  
20 airports, bridgework, sewer treatment plants, all --  
21 that's what we classify as heavy construction, in lieu  
22 of what it does not include, such as, commercial and  
23 residential building.

24 Q. How much of Road-Con's business is Public Works  
25 projects?

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1 A. Over 95 percent.

2 Q. What is a typical contract amount for Road-Con?

3 A. Our contracts range from \$200,000 to \$60 million,  
4 however, our average size would most likely be in the 5  
5 to \$15 million range.

6 Q. Okay. Mr. Hoffman, I would just like to show you  
7 what I've previously marked as Hoffman Exhibit 1. And  
8 I -- I don't know if you have this yet, but I did email  
9 it around to counsel last night.

10 MR. ZIMOLONG: I haven't shared any  
11 of the documents with the witness. I got them  
12 late last night. I'm just seeing them now.  
13 So you would have to share the screen.

14 MS. FURST: What I may do -- unless  
15 the court reporter tells me this is not a good  
16 idea -- is to put it in the chat. I think  
17 that just might be smoother. Let me see if I  
18 can do that.

19 MR. ZIMOLONG: Off the record.

20 -- --

21 (A brief discussion was held off  
22 the record.)

23 -- --

24 MS. FURST: Okay. I apologize for  
25 the delay, everyone. I had to rotate the

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1 image so it was not sideways.

2 - - -

3 (Exhibit Hoffman 1 marked for  
4 identification.)

5 - - -

6 BY MS. FURST:

7 Q. Mr. Hoffman, can you see this document on the  
8 screen?

9 A. Yes, I can.

10 Q. Okay. And this has been marked as Hoffman 1.

11 And is this familiar to you, Mr. Hoffman, this  
12 document?

13 A. That looks like one of our status of contract  
14 sheets that we often put in when an owner requests  
15 qualifications or current backlog.

16 Q. Okay. So starting on the first page, it says at  
17 the top, 2019 contracts. And then looking at the  
18 contract prices, is it accurate that all of the contract  
19 prices on this page are under one million?

20 A. On that page, yes.

21 Q. Okay. And then we'll go to the next page, which  
22 is 2018 contracts.

23 And then there is it accurate that the contract  
24 listed in the very first row is for 12 million and  
25 change, and the rest of the contracts on that page for



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1 2018 are for 2 million or less; is that right?

2 A. That's correct.

3 Q. And then just one more page. Let's just look at  
4 the third page, which is 2017 contracts.

5 So just to confirm here, the second row from  
6 the top is a contract for approximately \$3 million; is  
7 that right?

8 A. Yes.

9 Q. Just over \$3 million.

10 And then three rows below that, there's a  
11 contract for underlying \$5 million; is that right?

12 A. That is correct.

13 Q. And then if you scroll down to the bottom, the  
14 second row from the bottom is a contract for  
15 approximately \$3 and a half million; is that  
16 correct?

17 A. That is correct.

18 Q. But the rest of these contracts reflected on this  
19 page for 2017 are all less than \$3 million; is that  
20 right?

21 A. Yes.

22 Q. Okay. And is this document a summary of all of  
23 Road-Con's contracts for these years?

24 A. Depending on when that document was printed, it  
25 may or may not be all-inclusive. For example, 2019 does

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1 not appear to be all-inclusive.

2 We generally have 20 or more contracts per  
3 year. So that looks to be an incomplete document. It  
4 may have been printed during the course of 2019.

5 Q. Understood. So setting aside 2019, does this  
6 appear to be accurate for the years 2018 or 2017?

7 A. To the best of my knowledge, yes. I don't  
8 believe I can remember every project off the top of my  
9 head. It appears to be complete.

10 Q. Okay. I'm going to end the screenshare.

11 So, Mr. Hoffman, is it fair to say that  
12 Road-Con has many contracts under \$3 million?

13 A. Yes, we have a good portion that fall under 3  
14 million, depending on market conditions and the  
15 availability of work, yes.

16 Q. You said that Road-Con is located in West  
17 Chester; is that correct?

18 A. That is our home office location, yes.

19 Q. In what states does Road-Con work?

20 A. Pennsylvania, New Jersey, Delaware, occasionally  
21 Maryland, although we have not been down in Maryland for  
22 quite some time.

23 Q. Okay. Anywhere else?

24 A. No. That's generally our geographical area.

25 Q. Focusing on Pennsylvania, what parts of

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1 Pennsylvania does Road-Con work in?

2 A. Generally we target east of the Susquehanna River  
3 or the Harrisburg area, so the eastern half of PA, and  
4 traveling north up generally to Pocono-type region, the  
5 mountain region. Although we do expand further than  
6 that on occasion -- we have done projects outside of  
7 that area -- that is our normal target area of  
8 Pennsylvania.

9 Q. So when working in any of the counties or states  
10 outside of Philadelphia, has Road-Con ever signed on to  
11 a project labor agreement?

12 A. No.

13 Q. Has Road-Con ever bid on a project that required  
14 the successful bidder to sign on to a project labor  
15 agreement?

16 A. No, we have not.

17 Q. Does Road-Con monitor Philadelphia invitations to  
18 bid on project labor agreements?

19 A. We monitor Philadelphia, as with all the other  
20 owners, for overall projects. We review the project to  
21 see if there is a project labor agreement before  
22 proceeding.

23 Q. Who does that monitoring or review?

24 A. Myself or my chief estimator, Murray Blaker.

25 Q. Okay. What factors does Road-Con consider when

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1 determining whether to bid on a City of Philadelphia  
2 Public Works project?

3 A. Same as most other projects. It would be the  
4 need that we have for capacity and the type of work it  
5 is at the time.

6 For example, the company does bridgework, it  
7 does roadwork, it does pipework. Those are all  
8 different resources. The leaders of those crews are  
9 specialized in those areas. So, for example, at one  
10 given time of the year we may be full capacity on  
11 pipework, but we may be light on bridgework, so we would  
12 look for a bridge project to fill that gap.

13 So it's not carte blanche. In other words, we  
14 just continue to bid work. We look for the discipline  
15 that we're short on at the time or to fill in the gap or  
16 schedules for that year.

17 Q. Do you consider the estimated cost of the  
18 contract or the contract amounts in determining whether  
19 to bid on a project?

20 A. Yes, we look at the size of the project and we  
21 also look at the time of it, the duration of the  
22 project.

23 For example, a \$10-million job that needed to  
24 be done in one year may or may not fit our schedule,  
25 versus a \$10-million job that spans over two years.

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1           So size and time and the discipline of the work  
2 all come into factors as to whether or not we make a  
3 decision to bid.

4       Q.       And is there a minimum contract amount that  
5 you're looking for when you're reviewing Philadelphia  
6 Public Works projects?

7       A.       No, we don't set a hard minimum. We see what  
8 fits at that time.

9       Q.       Anything else you can think of that you have to  
10 consider when deciding whether to place a bid on a  
11 Philadelphia Public Works project?

12       A.       The only other item I would think of is if we  
13 need -- the load on our estimating department at that  
14 time is to the point where we have to make a decision  
15 whether we target all projects available or we have to  
16 pick and choose because we simply don't have enough time  
17 to price all the projects.

18       Q.       How much time is typically required for the  
19 estimating department to put together a bid?

20       A.       That's a complex question to answer. It depends  
21 on the complexity of the project, the type of work it  
22 is. For example, a straight asphalt overlay project is  
23 fairly simple for the estimators to put together,  
24 whereas a complex bridge project, in the middle of the  
25 city, with a lot of utilities, that would take a lot

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1 more time.

2 So they can range from a couple of days, to put  
3 a price together, to a few weeks.

4 Q. Do you consider the City of Philadelphia one of  
5 Road-Con's clients?

6 A. We consider them an available owner for us to  
7 work for. We have targeted the City of Philadelphia  
8 projects in the past when available. We do work in the  
9 city when we're working for PennDOT. Often PennDOT will  
10 be the owner on the project, so we go into the city  
11 limits quite often.

12 The -- obviously, the PLA in the past has  
13 hampered some of our ability to go in and work directly  
14 for the City.

15 Q. Are you familiar with the 15th Street Bridge  
16 project that's discussed in the complaint in this case?

17 A. I am, yes.

18 Q. Are you aware that the PLA requirement was  
19 removed for that project?

20 A. Yes, I was.

21 Q. And did Road-Con ultimately bid on that project  
22 after the PLA was removed?

23 A. I believe we did, and I believe we were second  
24 place bidder out of five or so bidders.

25 Q. And are you familiar with the runway project

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1 that's also discussed in the complaint in this case?

2 A. Yes. Yes, I am.

3 Q. And are you aware that the PLA requirement was  
4 removed for that project?

5 A. Yes, I was.

6 Q. Do you know if Road-Con bid on that project after  
7 the PLA was removed?

8 A. We did. We were less competitive on that project  
9 due to the nature of the project, but we did place a bid  
10 on the project.

11 Q. So prior to the time that the complaint in the  
12 case was filed in April of 2019, did Road-Con bid on  
13 City of Philadelphia Public Works projects?

14 A. We have in the past, yes. We've bid on City of  
15 Philadelphia and the Philadelphia Airport projects in  
16 the past.

17 Q. Okay. And can you give me sort of a timeframe of  
18 when you recall Road-Con bidding on City of Philadelphia  
19 Public Works projects?

20 A. I cannot state a date, which dates we bid on  
21 projects over the years. For example, we have 30  
22 projects currently on our bid list that generally carry,  
23 so we bid a host of projects every year. The timing, I  
24 wouldn't be able to -- I would be guessing.

25 Q. Do you believe that Road-Con has placed bids on

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1 City of Philadelphia projects within the last five  
2 years?

3 A. I believe so. But, again, I'm guessing to some  
4 extent of the timing.

5 Q. Okay. Has Road-Con ever been a successful bidder  
6 on a Philadelphia Public Works project?

7 A. I cannot recall if we ever worked directly for  
8 the City under their Public Works program. Again, we  
9 worked in the city for other owners, public owners,  
10 SEPTA and PennDOT, but I cannot recall. I cannot  
11 recall. I am sorry.

12 Q. Has Road-Con ever refrained from bidding on a  
13 city Public Works projects for a reason other than a PLA  
14 requirement?

15 A. I am sure there is an instance where we analyze  
16 the project and did not like the level of risk or the  
17 timing with the schedule and we declined. We do that on  
18 many projects, for many owners. We begin to estimate  
19 the project.

20 And if, during the course of reviewing it, we  
21 find items that we're not comfortable with, then we will  
22 discontinue and not price the project.

23 Q. I want to move now to, sort of, projects that  
24 post-date the 15th Street and runway project.

25 So do you know if Road-Con has bid on any



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1 City of Philadelphia Public Works projects after April  
2 2019?

3 A. We have. We have bid on -- two, off the top of  
4 my head, were what they call green stormwater  
5 improvement projects, and I can't recall if there was  
6 another bridge project in there or not. But we have bid  
7 directly to the City on a couple projects since that  
8 time.

9 Q. Okay. And was Road-Con the successful bidder on  
10 any of those projects?

11 A. We were not.

12 Q. Other than -- just setting aside the 15th Street  
13 and runway projects for a moment, has Road-Con refrained  
14 from submitting bids on other Public Works projects  
15 because they include a project labor agreement?

16 A. Yes, we have.

17 Q. Which projects were those?

18 A. There was a series of projects at the  
19 Philadelphia Airport, which we inquired about, saw there  
20 was a PLA, and declined bidding because we cannot enter  
21 into a PLA with our current workforce.

22 Q. And this is a separate airport project from  
23 the runway project, that's the subject of the complaint?

24 A. That is correct, yes.

25 Q. Do you recall what year that project is from?

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1 A. There have been a couple projects over the  
2 last -- each of the last three years at the Philadelphia  
3 Airport, which we have declined because they included a  
4 PLA.

5 Q. At the time you declined those projects, did you  
6 reach out to anyone in the City to -- or the airport to  
7 let them know about Road-Con's interest in bidding?

8 A. We inquired to the point of asking if the project  
9 had a project labor agreement. Once they said it did,  
10 we declined. On a couple occasions they said it did  
11 not, we proceeded.

12 Q. Has Road-Con ever bid on a City project that  
13 requires a PLA?

14 A. No.

15 Q. How many employees does Road-Con have?

16 A. Well, our employees vary in total because we are  
17 seasonal to some effect. The management staff and the  
18 tradespeople included would total approximately 100 to  
19 120, depending on the volume each year.

20 Q. Okay. And let's start with management staff.

21 How many employees do you have under that  
22 category?

23 A. All inclusive, approximately 30.

24 Q. And are those employees full-time employees?

25 A. Yes, the management staff are all full-time

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1 employees.

2 Q. And are they permanent employees?

3 A. Yes.

4 Q. So they're not seasonal employees, correct?

5 A. That's correct.

6 Q. Now for tradespeople, approximately how many  
7 tradespeople?

8 A. Again, it varies season to season. Anywhere from  
9 60 to 90, depending on the workload and type of work  
10 that we have. For example, bridgework tends to take  
11 more people than roadwork. If we're a little heavier on  
12 bridgework, that would increase our volume of  
13 tradespeople that particular year.

14 Q. Okay. And the Road-Con tradespeople, are they  
15 permanent employees or temporary employees or seasonal  
16 employees?

17 A. They're provided to us from the United  
18 Steelworker hiring vault under the collective-bargaining  
19 agreement, so they are permitted to come and go. For  
20 example, as they have a layoff, they can be reassigned  
21 to a different steelworker company.

22 Q. So some of the tradespeople that work at  
23 Road-Con also work for other contractors; is that  
24 correct?

25 A. Other contractors under the Pennsylvania Heavy

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1 and Highway Contractors bargaining agreement, yes.

2 Q. Are all of Road-Con's employees members of the  
3 United Steelworkers Union?

4 A. Can you repeat that for me?

5 Q. Sure. Are all of Road-Con's employees members of  
6 the United Steelworkers?

7 A. No, the management people would not be, only the  
8 trade folks we talked about.

9 Q. Apologies. There's some background noise where  
10 I'm at.

11 Are Road-Con's management employees members of  
12 any union?

13 A. No, they are not.

14 Q. Are all of the tradespeople who work for Road-Con  
15 members of the United Steelworkers?

16 A. Yes, they are.

17 Q. I'm going to share my screen again and show you  
18 what I've previously marked as Hoffman Exhibit 6.

19 Just one second, please.

20 MS. FURST: Okay. This is Hoffman  
21 deposition Exhibit 6.

22 - - -

23 (Exhibit Hoffman 6 marked for  
24 identification.)

25 - - -

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1 BY MS. FURST:

2 Q. And, Mr. Hoffman, this is your affidavit from a  
3 motion that your counsel recently filed.

4 Do you want to take a quick look at this?  
5 Just take a moment.

6 A. I'm familiar with the document.

7 Q. Okay. And have you -- let's look at paragraph 6,  
8 which says Road-Con -- sorry, paragraph 10, which says  
9 that the employees of Road-Con have chosen the United  
10 Steelworkers to be their bargaining representative.

11 A. Okay.

12 Q. What do you mean when you say that "They have  
13 chosen the United Steelworkers to be their bargaining  
14 representative"?

15 A. The employees have the option to be union or to  
16 not be union. As I said, from the inception of the  
17 company, the current company, was a purchase of an  
18 original company founded back in 1969. The employees  
19 back at that date, I can't testify to that or how that  
20 came about, procured the United Steelworkers or joined  
21 the United Steelworkers.

22 And with that, they maintain that status to  
23 current day, including through the buyout of when Rocon  
24 bought Road-Con.

25 They are -- I don't -- yep, I don't know what

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1 else I can explain to it.

2 Q. Okay. Could the employees of Road-Con choose  
3 another union in the future to represent them?

4 A. We have an attorney, Andrew Levi, which  
5 particularly advises me on the terms and conditions of  
6 the bargaining agreement between us and the United  
7 Steelworkers. I would say I would look to him to tell  
8 me how that process would take place.

9 I would imagine it would have to be a group  
10 move. In other words, the individual employees cannot  
11 choose to go to another union. They're not allowed to  
12 participate in dual unions.

13 But I would imagine that under a certain  
14 scenario, the employees as a collective group could vote  
15 the union out, but I'm not sure. I would have to refer  
16 to my attorney for that.

17 Q. Okay. Thanks. Let's go down to paragraph 22 of  
18 your affidavit. And I'll read it.

19 "Because Road-Con maintains a  
20 collective-bargaining agreement with United  
21 Steelworkers, it cannot perform work on any City of  
22 Philadelphia Public Works subject to a project labor  
23 agreement with its current workforce."

24 What does the phrase "current workforce" mean  
25 in this paragraph?

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1 A. It would mean the United Steelworkers.

2 Q. Does it include both Road-Con's management  
3 employees and the seasonal tradespeople employees?

4 A. No. I would say my statement to current  
5 workforce would be attributed to the seasonal  
6 tradespeople. That's what we consider our workforce,  
7 our direct force that executes the work.

8 Q. Could Road-Con decide to disaffiliate from the  
9 Steelworkers?

10 A. I would have to refer again to my attorney,  
11 Andrew Levi, who handles that, and what that process  
12 would be. It has not been explored, so I can't really  
13 answer the question.

14 Q. Road-Con can perform work on Philadelphia Public  
15 Works projects that are not subject to a project labor  
16 agreement with its current workforce, correct?

17 A. Yes. Yes. That's why we continue to attempt to  
18 procure work from the City.

19 Q. Have you ever asked any employee of Road-Con to  
20 change their union membership so that Road-Con can bid  
21 on a City of Philadelphia Public Works projects that  
22 require a PLA?

23 A. We have not asked the employees that, no.

24 Q. And why not?

25 A. We are under agreement that, to my knowledge,

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1 prohibits that.

2 Q. And is that the agreement -- let me go back  
3 to -- is that the agreement that the Pennsylvania Heavy  
4 and Highway Contractors Bargaining Association entered  
5 into with the Steelworkers?

6 A. Yes. The Heavy and Highway Contracting  
7 Bargaining Association agreement, at the beginning,  
8 explains in the agreement the coverage area for that  
9 agreement, and it includes Philadelphia.

10 Q. Would you bid on a City of Philadelphia Public  
11 Works project that required a PLA if the United  
12 Steelworkers were a party to the PLA?

13 A. That would require a review of the terms of the  
14 PLA. If the PLA agreement incorporated the  
15 collective-bargaining agreement from the Pennsylvania  
16 Heavy and Highway Contractors Bargaining Association,  
17 then we could consider it.

18 Otherwise, I would have to refer to my  
19 attorney, Andrew Levi, to see if we could work under the  
20 terms of the PLA if it included the Steelworkers, but  
21 the terms did not mimic our current  
22 collective-bargaining agreement. So it's sort of a  
23 complex question.

24 Q. Understand. Let me ask it in a less complex way.

25 Would you bid on a City of Philadelphia Public



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1 Works project that required a PLA if you could still use  
2 Road-Con's current workforce for the project?

3 MR. ZIMOLONG: I'm going to object  
4 to the extent that requests a hypothetical,  
5 but the witness can clearly answer.

6 THE WITNESS: Yes. Again, there  
7 are a couple considerations with that. If we  
8 could use our current workforce and maintain  
9 our current Health and Welfare Pension  
10 programs and not have to duplicate pay or ask  
11 our employees to forego their benefits,  
12 that's -- as I stated, it is a bit of a  
13 complex question.

14 MS. FURST: Okay. Thank you,  
15 Mr. Hoffman.

16 I think we should take about a  
17 ten-minute break. I may -- I'm either done or  
18 will have just a very short amount of  
19 questions left after the break. And then I  
20 think intervenors may have questions as well,  
21 but I think now would be a good time to take a  
22 brief break.

23 MR. ZIMOLONG: Just a quick --  
24 we're off -- we can go off the record for  
25 this.



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1 questions.

2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MR. WEINERT:

6 Q. Mr. Hoffman, my name is Michael Weinert. I  
7 represent the intervenors in this matter, the National  
8 Electrical Contractors Association and the Mechanical  
9 Service Contractors Association.

10 And previously you testified that you have  
11 been on two projects for the City since April of 2019.

12 Did those two projects have PLAs on them?

13 A. Mike, actually, after the question was asked, I  
14 had the opportunity to refresh my memory a little bit.  
15 It's actually been more than those two projects.

16 In all cases, the projects did not include a  
17 PLA. In one case we did on a project, which I did not  
18 mention, which was bid through PennDOT but the owner was  
19 the City of Philadelphia. It was for a green stormwater  
20 management installation. We were a low bidder on that  
21 project. The City would ultimately have to sign the  
22 contract with us. They did not react for the 60 days  
23 and the bid expires at 60 days.

24 When inquired as to why they were not entering  
25 into the contract, they said they had some

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1 administrative issues and it was going to take longer,  
2 if we wanted to extend the time to award, we could,  
3 under the condition that the end of the contract was not  
4 changed and the price was not changed.

5 Well, obviously, once 60 days goes by, all our  
6 pricing expires with our vendors. And not knowing when  
7 we could expect to get an award from the City, we had to  
8 walk away at that point.

9 That's actually happened on two occasions over  
10 the last five years where we bid and we were a low  
11 bidder and the City failed to execute the contract  
12 within the 60-day limit that's in that contract for the  
13 City.

14 The other project was at the Philadelphia  
15 Airport. It did not include a PLA. It was to put some  
16 safety bollards in front of the over -- or in front of  
17 the terminal. And, again, the 60 days was allowed to  
18 expire without them signing the contract with us.

19 Q. So that first PennDOT project, that project did  
20 have a PLA on it, correct?

21 A. No, it did not.

22 Q. Okay.

23 A. None of the projects I talked about had a PLA.

24 Q. So you've never been on a project for the City  
25 with a PLA and been the successful bidder and then

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1 reached the point where you would have signed the  
2 PLA?

3 A. That is correct, and we've never been in that  
4 situation.

5 Q. Okay.

6 MR. WEINERT: That's all the  
7 questions I have.

8 MR. ZIMOLONG: I just have -- do  
9 you have anything, Lydia?

10 MS. FURST: Thanks, Wally. I was  
11 just going to follow up on a couple things  
12 real quickly.

13 - - -

14 REDIRECT EXAMINATION

15 - - -

16 BY MS. FURST:

17 Q. So, Mr. Hoffman, you mentioned a stormwater  
18 project that was bid through PennDOT but owned by the  
19 City of Philadelphia?

20 A. Yes. That's a local match situation. They do it  
21 quite often where PennDOT will bid the project, but  
22 ultimately the contract is with the City, executed by  
23 the City.

24 Q. Understood. Do you remember approximately when  
25 you bid on this project?

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1 A. It was winter of last year, 2019, 2020. I do not  
2 recall the exact date. It was over the winter.

3 Q. Do you remember anything about the contract  
4 amount?

5 A. Approximately 1.3, 1.4 million.

6 Q. And do you remember anything about what the  
7 project was called?

8 A. I do not. I believe it was 52nd Street in West  
9 Philadelphia, was the location. PennDOT would have  
10 assigned an SR number, and I don't remember that off the  
11 top of my head.

12 Q. Okay. And do you recall, was this the  
13 Philadelphia Water Department?

14 A. I believe the contract was to be executed by the  
15 City of Philadelphia. I don't know the particular  
16 division that was handling the job.

17 Q. Okay. And then you mentioned another project  
18 that you recalled Road-Con bidding on and being the  
19 lowest responsible bidder.

20 What else can you tell me about that project?

21 A. The timing of which was some years ago. I'm  
22 going to say five or six years ago. It was a project  
23 for the Philadelphia Airport to install safety bollards  
24 in front of the terminal and reconstruct. It was a  
25 couple-million-dollar project.

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1 Same situation back then, we were low bidder,  
2 there was no PLA on the project, so we bid it. We were  
3 the lowest responsible bidder. The City was not moving  
4 forward with an award. We inquired about it. They said  
5 they were having some internal issues.

6 We went down for a scope meeting to review the  
7 project, and during the meeting, off the record, they  
8 had said they really did not want to award the project  
9 to us. And at that time, we let the award expire, we  
10 did not fight that situation.

11 Q. Was a reason given as to why the City did not  
12 want to award the project to Road-Con?

13 A. Verbally, off the record, I asked them to let me  
14 know if there was a problem, and verbally, off the  
15 record, he said we were not of the right union type  
16 and it was causing some internal friction inside the  
17 City.

18 Q. And do you have any recollection of who you spoke  
19 to at the airport about this?

20 A. No. It was a meeting between myself, my  
21 estimator, project manager that handled the job and  
22 about three folks from the City.

23 Q. And, Mr. Hoffman, did you look at any documents  
24 in preparation for your deposition?

25 A. Today, just my affidavit.

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1 Q. Okay. And what about previous to today, did you  
2 look at any documents in preparation for your  
3 deposition?

4 A. No.

5 Q. Okay. And you stated that you sort of refreshed  
6 your recollection about some things while we just took a  
7 break; is that right?

8 A. Yes. Yes. In particular, I was looking -- I  
9 knew we had bid more than just the two projects for the  
10 City over the course of the last year, and I had not  
11 pulled it together as quick as I would have liked to  
12 while we were going through the questions.

13 Q. Okay. And did you remember any other projects  
14 that Road-Con bid on over the past several years?

15 A. They were the only two that came to mind. We  
16 actually do have one or two currently on our bid list to  
17 bid on over the upcoming weeks.

18 MS. FURST: Okay. Just one second.

19 Let me just check one thing.

20 (Pause.)

21 Okay. That's all.

22 -- --

23 RECROSS-EXAMINATION

24 -- --

25 BY MR. ZIMOLONG:



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1 Q. This is Wally Zimolong. It's not usual I ask my  
2 own witnesses some questions at the deposition, but I  
3 just wanted to follow up on a couple points to clarify  
4 the record.

5 Mr. Hoffman, you testified that Road-Con bid on  
6 a project that was going to be -- the contract was going  
7 to be signed by the City of Philadelphia, and you did  
8 that, or Road-Con did that in the winter of 2019,  
9 correct?

10 A. That's correct.

11 Q. And that -- would it have been in and around  
12 December of 2019, sound about correct?

13 A. It's about correct, yes. I'd have to pull the  
14 records out to find the actual bid date.

15 Q. And that was -- that bid was submitted during the  
16 pendency of this litigation, correct?

17 A. Yes.

18 Q. Okay. And Road-Con was the lowest responsible  
19 bidder on that project, correct?

20 A. Correct.

21 Q. Okay. And 60 days expired, but the City of  
22 Philadelphia never presented a contract to Road-Con,  
23 correct?

24 A. That's correct.

25 Q. And on a previous occasion, Road-Con bid on a

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1 project owned by the City of Philadelphia Airport in  
2 which a similar circumstance occurred, correct?

3 A. Correct.

4 Q. And there were representatives of the City of  
5 Philadelphia that told you the reason why Road-Con was  
6 not presented a contract was because of its union  
7 affiliation, correct?

8 A. Correct.

9 MR. ZIMOLONG: Okay. I don't have  
10 anything else for the witness. Thank you.

11 Are we all done? Is the witness  
12 done? Lydia? Michael?

13 MR. WEINERT: I have nothing  
14 further.

15 MS. FURST: Yeah, I have nothing  
16 further.

17 MR. ZIMOLONG: Thank you. Thanks,  
18 Al. Have a good day.

19 - - -

20 (Deposition concluded at 10:07  
21 a.m.)

22 - - -  
23  
24  
25

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and  
evidence noted are contained fully and accurately in the  
stenographic notes taken by me in the foregoing matter,  
and that this is a correct transcript of the same.

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Court Reporter - Notary Public

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# Exhibit M

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -  
ROAD-CON, INC., NESHAMINY : CIVIL ACTION  
CONSTRUCTORS, INC., LOFTUS : NO. 2:19-cv-01667-JS  
CONSTRUCTION, INC., :  
PKF-MARK III, and SCOTT A. :  
LACAVA :  
Plaintiffs, :  
-V- :  
CITY OF PHILADELPHIA and :  
JAMES KENNEY, IN HIS :  
OFFICIAL CAPACITY AS MAYOR :  
OF THE CITY OF PHILADELPHIA :  
Defendants. :

- - -  
Friday, September 25, 2020  
- - -

ORAL ZOOM DEPOSITION OF SCOTT LACAVA,  
taken pursuant to the Subpeona, held remotely and by  
Zoom videoconference in Pennsylvania, commencing at 1:00  
p.m., before SHARON RICCI, RMR, CRR - Notary Public  
there being present.

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September 25, 2020

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A P P E A R A N C E S:

MITCHELL LAW PLLC

BY: JONATHAN F. MITCHELL, ESQUIRE  
111 Congress Avenue, Suite 400  
Austin, Texas 78701  
(512) 686-3940  
jonathan@mitchell.law  
Representing the Plaintiffs

KANG, HAGGERTY & FETBROYT, LLC

BY: MICHAEL SCOTT WEINERT, ESQUIRE  
123 S. Broad Street, Suite 1670  
Philadelphia, PA 19109  
(215) 525-5850  
mweinert@khflaw.com  
Representing the Intervenors

CITY OF PHILADELPHIA LAW DEPARTMENT

BY: LYDIA FURST, ESQUIRE  
AMY KIRBY, ESQUIRE  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102  
(215) 683-3573  
lydia.furst@phila.gov  
amy.kirby@phila.gov  
Representing the Defendants

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SCOTT LACAVA (Witness sworn)	5

EXAMINATION BY:

MS. KIRBY:	5
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E X H I B I T S

NUMBER	DESCRIPTION	PAGE
(None presented.)		

- - -

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1 COURT REPORTER: Counsel, I will  
2 read a stipulation into the record. Please  
3 bear with me, as it is long.

4 It is hereby stipulated and agreed  
5 by and between counsel for all parties present  
6 that pursuant to 231 Pa. Code 4002 this  
7 deposition is being conducted by Zoom  
8 conference, that the court reporter, all  
9 counsel, and the witness are all in separate  
10 remote locations and participating via Zoom  
11 conference meeting under the control of  
12 Strehlow & Associates Court Reporting Service,  
13 that the officer administering the oath to the  
14 witness need not be in the place of the  
15 deposition and the witness shall be sworn in  
16 remotely by the court reporter after  
17 confirming the witness's identity, that this  
18 Zoom conference will not be recorded unless  
19 previously noticed as a videotaped deposition  
20 and that any recording without the express  
21 written consent of all parties shall be  
22 considered unauthorized, in violation of law,  
23 and shall not be used for any purpose in this  
24 litigation or otherwise.

25 It is further stipulated that

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1 exhibits may be marked by the attorney  
2 presenting the exhibit to the witness, and  
3 that a copy of any exhibit presented to a  
4 witness shall be emailed to or otherwise in  
5 possession of all counsel prior to any  
6 questioning of a witness regarding the exhibit  
7 in question. All parties shall bear their own  
8 costs in the conduct of this deposition by  
9 Zoom conference.

10 So stipulated, counsel?

11 MS. KIRBY: This is Amy Kirby for  
12 the City of Philadelphia. We agree to the  
13 stipulation.

14 MR. WEINERT: Michael Weinert,  
15 attorney for the intervenors. We agree to the  
16 stipulation.

17 MR. MITCHELL: Jonathan Mitchell  
18 for the plaintiffs, and we agree to the  
19 stipulation.

20 ...SCOTT LACAVA, after having been  
21 first duly sworn, was examined and testified  
22 as follows:

23 - - -

24 DIRECT EXAMINATION

25 - - -

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1 BY MS. KIRBY:

2 Q. Good morning, Mr. Lacava.

3 A. How are you doing?

4 Q. My name is Amy Kirby, I'm an attorney for the  
5 City of Philadelphia, and I will be taking your  
6 deposition today.

7 Have you ever had your deposition taken before?

8 A. No. Well --

9 Q. Okay.

10 A. No.

11 Q. No? Okay.

12 Then so I assume this is your first time  
13 virtual deposition also?

14 A. Yes.

15 Q. Okay. So I'll go over just a few ground rules so  
16 we're both on the same page. I will ask you a question  
17 and I will ask that you don't respond until I get  
18 through my complete question, because we have a court  
19 reporter here with us. We want to make sure that we  
20 have everything down in the transcript, so make sure  
21 that your answers include a verbal response as opposed  
22 to just a head nod or shake of your head or anything  
23 like that.

24 A. Sure.

25 Q. If you don't understand a question that I ask or

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1 you need me to repeat it, I'm happy to do so. If you  
2 need to take any breaks during the deposition, you can  
3 feel free. I would just ask that you answer any  
4 question that's being posed before you ask for a break.

5 A. Sure.

6 Q. And I will say that I also tend to talk pretty  
7 quickly. So if I talk too fast for you or you need me  
8 to repeat something because I am talking too fast, feel  
9 free to tell me to slow down. I won't be offended, I  
10 promise.

11 Prior to the deposition today, Mr. Lacava,  
12 have you looked at anything related to this case to  
13 refresh your memory?

14 A. Yes.

15 Q. Okay. And what have you looked at?

16 A. I looked at the paperwork that I originally  
17 signed.

18 Q. Was that the litigation document, like the  
19 complaint, or the affidavit?

20 A. It was the affidavit.

21 Q. Okay. Did you consult with anyone prior to your  
22 deposition today?

23 A. Yes, I did.

24 Q. Okay. And who was that?

25 A. That was the attorney.



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1 Q. Okay. And is there anything that might not allow  
2 you to give truthful answers today?

3 A. No.

4 Q. Okay. All right. So I'm going to get started,  
5 and I just want to understand a little bit of your  
6 background.

7 So could you tell me, what do you do for a  
8 living, Mr. Lacava?

9 A. I build bridges. Highway work. Heavy  
10 construction.

11 Q. Okay.

12 A. I'm a carpenter and some jobs as a carpenter  
13 foreman.

14 Q. Okay. And tell me a little bit about -- and I'll  
15 show my ignorance here by understanding what a carpenter  
16 does, but tell me a little bit about specifically what  
17 you do when you build bridges?

18 I mean, are you bringing supplies in? Are you  
19 building things up? Are you watching other people  
20 construct things? How does your day-to-day job  
21 generally work?

22 A. On a bridge construction or even in a roadway,  
23 it's from the ground up. Everything involved in that  
24 project is pretty much -- there's going to be a  
25 carpenter involved. From laying out to building the

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1 project to walking the beams, setting everything,  
2 setting the beams, doing the decks, everything.

3 Q. Okay. And how long have you been doing carpentry  
4 work or have you been a carpenter?

5 A. Thirty-seven years.

6 Q. Okay. Have you done any other kind of  
7 construction work other than carpentry?

8 A. Finishing and iron worker.

9 Q. And what kind of training have you received in  
10 order to, you know, have your position or be a  
11 carpenter?

12 A. The training we received was -- most of it was on  
13 the job site. It was very long ago, but most of it was  
14 on the job site and they came up through -- you had to  
15 work underneath the -- what it was, was my father, who  
16 was, you know, Steelworkers.

17 Q. And you just mentioned the Steelworkers.

18 Are you affiliated with the Steelworkers?

19 A. Yes, I am.

20 Q. Are you a member of the Steelworkers Union?

21 A. Yes, I am.

22 Q. Okay. Do they provide any -- or did they provide  
23 any training back in the day when you first started 37  
24 years ago?

25 A. They -- the training they had, they had -- you

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1 could go -- they had classes you could go to and things  
2 like that. And people did go to that to go through the  
3 training.

4 I know it progressed over the years where it's  
5 a lot better, but -- it's very good now, but, yeah, most  
6 of it back then was we were on that project and we  
7 learned from the project. That was the early 80's.

8 Q. Okay. Do you have any specific certifications or  
9 anything like that?

10 A. Yes, certified on the -- actually, the crane,  
11 small cranes, Lulls, I'm a concrete finisher tester.

12 Q. And for those certifications, did you get those  
13 through the Steelworkers or is that a separate situation  
14 where you're able to obtain the certifications?

15 A. The Steelworkers. It's often from the  
16 Steelworkers.

17 Q. Okay. How long have you been a member of the  
18 Steelworkers Union?

19 A. Thirty-four years.

20 Q. Okay. Is that continuous, so since the time you  
21 started as a member of the Steelworkers, you've always  
22 been a member of the Steelworkers?

23 A. Yes.

24 Q. Okay. Prior to that, prior to those 34 years,  
25 were you a member of any other unions?

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1 A. No.

2 Q. Okay. And during those 34 years, have you been a  
3 member of any other unions?

4 A. Yes.

5 Q. Okay. What other unions?

6 A. Local 592.

7 Q. Okay. And tell me, what is Local 592?

8 A. 592 is the Finishers Union.

9 Q. Okay. And, again, forgive my ignorance about the  
10 union process, but were you a member of the Steelworkers  
11 Union and the Local 592 at the same time?

12 A. No. No. It was six months I worked for Local  
13 592 and --

14 Q. Okay. And when was that?

15 A. I believe that was in 19 -- I think, believe it  
16 was 1989.

17 Q. Okay. Definitely not a memory test, so I'm  
18 impressed that you know even that close to the range.  
19 That's fine.

20 So other than that little stint where you were  
21 a member of Local 592, you've always been a member of  
22 the Steelworkers?

23 A. Yes.

24 Q. Okay. And are you familiar with Road-Con?

25 A. Yes, I am.

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1 Q. Are you an employee of Road-Con?

2 A. Yes, I am.

3 Q. Okay. And how long have you worked for Road-Con?

4 A. Road-Con, it's 25 years.

5 Q. Okay. And prior to that, who did you work for?

6 A. It was Rocon.

7 Q. Okay. So it was the company that was the  
8 predecessor to Road-Con, correct?

9 A. Yes. They had two other predecessors to it, but  
10 it was always the same company. It was different names.

11 Q. And what was your position with Road-Con?

12 A. I am a foreman, carpenter foreman.

13 Q. And explain to me a little bit how that works.  
14 Because I understand -- we spoke to Mr. Hoffman this  
15 morning and he explained that the management officials  
16 are not members of unions and, obviously, the Road-Con  
17 management officials.

18 You are a member of a union, so how does that  
19 fit in with your employment at Road-Con? Are you  
20 specifically employed with them? Do you receive  
21 checks from them or do you receive them from the  
22 Steelworkers?

23 A. No, I get paid from Road-Con. All the big  
24 decisions on a job site are made by the company. Since  
25 I'm a union member, I can't do anything at the

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1 management -- the guys can do.

2 Q. Okay. So aside from management, how many union  
3 employees are employed by Road-Con, if you know?

4 A. There's probably about -- I would say roughly 70.

5 Q. Okay. And do you only do work for Road-Con or do  
6 you ever work for any other construction contractors?

7 A. Over the years, I worked for other companies, but  
8 they were United Steelworkers. But only for short, you  
9 know, short periods of time.

10 Q. So explain to me how that would work. If you're  
11 technically an employee of Road-Con and you're working  
12 on another project, is it because Road-Con gives you the  
13 approval to work for another company, or do Steelworkers  
14 tell you to work for that other company?

15 How does that actually work that you can go  
16 work for someone else?

17 A. They're with the United Steelworkers. Say with  
18 Neshaminy, Neshaminy Contractors, they're with the  
19 United Steelworkers and I'm a carpenter. And so we're  
20 working on the same project, so I would just work for  
21 them for two weeks or whatever.

22 Q. Okay. And when you say "work for them," does  
23 that mean they're paying your checks, your income, or  
24 what else does it look like when you say "work for  
25 them"?

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1 A. It would still be Road-Con banking.

2 Q. So if you're working for Neshaminy, you're still  
3 getting paid by Road-Con, but what does that look like?

4 Do they pay any of your benefits? Are they the  
5 ones supervising you? How did you know you were working  
6 for Neshaminy instead of Road-Con?

7 A. Road-Con would still carry all the benefits and  
8 take care of it that way.

9 Q. Okay. So is it fair to say -- and, again, I'm  
10 just trying to figure this out so I understand -- that  
11 Road-Con essentially loaned you out to Neshaminy because  
12 they needed someone with your skillset?

13 A. Possibly.

14 Q. Okay. I'm just -- if I am mischaracterizing it,  
15 then, by all means, tell me.

16 A. Yeah. I don't -- possibly. I don't --

17 Q. Okay.

18 A. -- know now.

19 Q. Let me ask one more question about Local 592.

20 Why did you decide to leave Local 592?

21 A. I worked there for -- it was like six months and  
22 I -- I couldn't -- there was no work at the time. And  
23 to me, the short time I worked there, the United  
24 Steelworkers, when I went back there, the reason I did  
25 it is because I believed they worked together for the

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1 United Steelworkers. I felt more comfortable working  
2 with them.

3 They -- I could find work. I could call the  
4 union hall. I could find work better. To me, it was a  
5 better organization to work on the other end.

6 Q. So why did you decide to leave the Steelworkers  
7 to go work for Local 592 for that brief period of time?

8 A. Back in the early -- or 80's and 90's, you used  
9 to have cold winters and a lot of times jobs didn't  
10 carry through the winters. And I like to keep working,  
11 just like the other guys in the union.

12 Q. Okay. So did the Steelworkers stop working in  
13 the winter, is that why --

14 A. A project would be shut down.

15 Q. Okay. And the Local 592 would continue to work  
16 through the winter?

17 A. On a project they were working through the winter  
18 and they continued working after that, after I left,  
19 because it just wasn't -- it just wasn't comfortable for  
20 me to work there.

21 Q. Oh, I see. So you wanted to work and they had a  
22 specific project that you were available to work on, so  
23 you went to work for that union, Local 592; is that  
24 right?

25 A. Yes.



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1 Q. Okay. And throughout the complaint and the  
2 affidavit, I see the words "bargaining representative."

3 Can you tell me what that means, in your mind,  
4 related to unions?

5 A. He takes care of all the -- actually, all the  
6 legal work for what we're allowed to -- what we're  
7 allowed to do on jobs and who controls the workforce.

8 Q. Okay. Are you a bargaining representative?

9 A. No. No, I'm not.

10 Q. Okay. Is it other employees at Road-Con, is  
11 that -- someone else is a bargaining representative, is  
12 that how it works?

13 A. I don't get into the bargaining representative.  
14 I'm at the work end.

15 Q. Okay.

16 A. I'm an employee who performs the work.

17 Q. Okay. Bear with me for a brief moment. I want  
18 to see if I can pull up an exhibit.

19 Page one, paragraph four.

20 So, Mr. Lacava, take a look at paragraph four,  
21 if you don't mind, and if you could just read it to  
22 yourself. And I just want to understand.

23 It says: My fellow co-workers and I have  
24 chosen the United Steelworkers to serve as our  
25 bargaining representative.

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1           What does it mean, chosen? How does that  
2 process work?

3       A.       When you join the union, when you join the union,  
4 you're joining the organization. So we chose them when  
5 we joined.

6       Q.       Okay. Were there other unions that were  
7 competing for your membership?

8       A.       No.

9       Q.       Okay. Was -- is there a vote among employees to  
10 join the union?

11      A.       The -- no. The union has been around for a long  
12 time. That would have had -- it wasn't at the -- it  
13 wasn't at Road-Con. Road-con wasn't already in it.

14      Q.       Okay. So essentially you -- is it fair to say  
15 you chose to work for Road-Con, they were affiliated  
16 with United Steelworkers, so you decided to be  
17 affiliated with United Steelworkers?

18      A.       I joined the United Steelworkers because I liked  
19 it.

20      Q.       Okay. So the Steelworkers first, and then  
21 Road-Con?

22      A.       It was Road-Con -- at the same time Road-Con  
23 wasn't allowed to hire until they -- I guess they have  
24 the -- they hire you and you got to decide whether  
25 you're going to join the union or not, because it's a

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1 union.

2 Q. Okay. So is it fair to say it's a condition of  
3 employment with Road-Con that you become a member of the  
4 United Steelworkers?

5 A. Yes.

6 Q. Okay. And when you joined, you had already known  
7 about the Steelworkers and you had liked them, so that  
8 wasn't an issue for you; is that correct?

9 A. It was in the family. The family has been in it.

10 Q. So if you didn't want to be a member of the  
11 Steelworkers, could you work for Road-Con?

12 A. I don't believe so.

13 Q. Okay. Other than management, are you aware of  
14 any other employees of Road-Con that are not members of  
15 the union, the Steelworkers?

16 A. No, I do not.

17 Q. So we talked before about the 70 employees who  
18 are -- well, strike that.

19 During your time with Road-Con, has there ever  
20 been a discussion about joining a different union  
21 besides the Steelworkers?

22 A. No.

23 Q. Okay. If you or your other  
24 Steelworkers-associated Road-Con employees, so that 70,  
25 wanted to join a union, could you guys vote or could you

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1 make that decision?

2 A. Could we make a decision --

3 Q. Like if you decided in this hypothetical -- if  
4 you wanted to go all work for Local 592, could you guys  
5 vote to switch unions from the Steelworkers to the Local  
6 592 and work for them instead?

7 A. I don't know. I don't know.

8 Q. Okay. Fair enough. And with Road-Con, are you a  
9 full-time employee?

10 A. Yes.

11 Q. Okay. Is any of your work ever seasonal?

12 A. No.

13 Q. Okay. So you're every 365 -- you know, every  
14 year you work -- you're a Road-Con employee all  
15 throughout the year, correct?

16 A. Yes.

17 Q. Okay. And you're not hired on a  
18 project-by-project basis, correct?

19 A. (No response.)

20 Q. I am sorry. Did you say no?

21 A. It is project-based.

22 Q. Okay.

23 A. It's no, but it's project based. You know, you  
24 have to have a project or you're not going to be  
25 working.

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1 Q. So if Road-Con didn't have -- right now, you  
2 know, it's September 25th. Say you're about to finish  
3 your project and they didn't have any new projects on  
4 the horizon until October, what would happen to your  
5 employment?

6 A. They would have to -- usually they do  
7 find -- they try to find more work. I guess you would  
8 be laid off.

9 Q. Okay. Have you ever been laid off at any point  
10 since you started working for Road-Con?

11 A. Yes.

12 Q. Okay. How often?

13 A. Earlier years when it was cold out, quite a few  
14 times.

15 Q. Okay. How about recently, in the last five  
16 years?

17 A. No.

18 Q. Okay.

19 A. We work rain or snow.

20 Q. And if you were laid off, say at the end of this  
21 year or next year, could you go work for another company  
22 in the meantime?

23 A. Within the union.

24 Q. Okay. So as long as it was a  
25 Steelworkers-affiliated company, you could go do a

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1 different job?

2 A. Yes.

3 Q. Okay. So does Road-Con increase their workforce  
4 if they get a really big job?

5 I know you said there's about 70 of you that  
6 are Road-Con employees and also Steelworker Union  
7 employees. They get a really big job, can they pull  
8 people in to work on those jobs?

9 A. Yes.

10 Q. Do they do that often?

11 A. Yes.

12 Q. In the last five years, how often do you recall  
13 that happening?

14 A. I recall the turnpike. Other than that, I don't  
15 see the management end of it where there was more  
16 people.

17 Q. Okay. Do you ever work on multiple projects at  
18 once?

19 A. Yes.

20 Q. How often does that happen?

21 A. It happens, I would say, about three months out  
22 of the year.

23 Q. Okay. And have you ever worked on multiple  
24 projects, one for Road-Con and one for another  
25 construction company?

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1 A. No.

2 Q. So at the same time you've never worked on a  
3 Road-Con and a non-Road-Con project?

4 A. Correct.

5 Q. Okay. Have you ever worked on any projects for  
6 the City of Philadelphia?

7 A. I don't believe so. I don't believe any of them  
8 were done.

9 Q. Okay. Have any of the 70 employees, your other  
10 union representative Road-Con employees, worked on  
11 projects for the City of Philadelphia, if you know?

12 A. I do not know that. I don't have that  
13 information.

14 Q. Do you have any preference as to what kind of  
15 projects you work on?

16 A. No.

17 Q. Okay. Do you have any preference as to location  
18 of projects?

19 A. No.

20 Q. Okay. Do you get any say if there's two Road-Con  
21 projects that are going to start around the same time,  
22 do you get any say as to which one you work on?

23 A. Wouldn't that be nice? No.

24 Q. And who tells you which project to work on, is it  
25 Road-Con or is it the Steelworkers?

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1 A. Road-Con directs us through the Steelworkers  
2 which projects we're going to.

3 Q. Okay. So do you know who makes those decisions?  
4 If they say Scott Lacava is going to work on a project,  
5 would it be Road-Con or would it be the Steelworkers?

6 A. It probably would be Road-Con to tell them.

7 Q. Okay. But you're not involved in the process?

8 A. No.

9 Q. Okay. To your knowledge, have you ever worked on  
10 any projects that have PLAs on them?

11 A. I don't recall.

12 Q. Okay. I'm going to take a look at one more  
13 exhibit, see if I want to pull it up.

14 Are you familiar with the City projects in this  
15 lawsuit?

16 A. I did hear about it.

17 Q. Okay. So there's two projects. There's one,  
18 we'll call the 15th Street project.

19 Does that sound familiar to you? Do you know  
20 anything about that project?

21 A. Yes, I did hear something about it, yes.

22 Q. Okay. If -- and if you've heard about it, do you  
23 understand that Road-Con has been on that project?

24 A. Yes.

25 Q. Do you know if they had been awarded the project,



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1 would you personally have worked on it?

2 A. For the United Steelworkers, yes.

3 Q. Okay. And do you know in what capacity you would  
4 have worked on that project?

5 A. Carpenter foreman.

6 Q. Okay. And I'll ask you the same question for the  
7 other contract. We call it the runway project. It's a  
8 project at the airport.

9 Do you recall if you would have worked on that  
10 project if Road-Con would have won a bid for it?

11 A. I don't recall the job. It must have been a  
12 while ago.

13 Q. Okay.

14 MS. KIRBY: I wonder if we could  
15 have five minutes? I think that might be all  
16 I have.

17 1:30, could we just have until  
18 1:35. Of course, if anyone else wants to  
19 chime in, but I want to see if we have  
20 anything left.

21 MR. WEINERT: No objection.

22 MS. KIRBY: Okay. All right. I'll  
23 pop back in in five minutes.

24 MR. WEINERT: Great.

25 — — —

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1 (Whereupon, a brief recess was  
2 taken.)

3 - - -

4 MS. KIRBY: All right. I think  
5 we're all back. I just have a few follow-up  
6 questions and then I think we're all done.

7 BY MS. KIRBY:

8 Q. Mr. Lacava, do you live in Philadelphia?

9 A. No.

10 Q. Okay. And what kind of trades are represented by  
11 the Steelworkers?

12 A. Every trade, every trade is -- for miner workers,  
13 carpenters, laborers. And in each one there's 10 to 12  
14 different categories. Operators -- there's different  
15 categories, different qualifications and they cover  
16 most -- almost everything.

17 Q. Okay. Is there any limit to the type of  
18 construction projects that Steelworkers can work on?

19 I know you said they do a lot of heavy highway  
20 work, but is there any type of projects they don't do?

21 A. No.

22 Q. Okay. And do the Steelworkers directly pay any  
23 of their members?

24 Like, would you ever get a check from the  
25 Steelworkers if you worked on a project that was, you

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1 know, represented by the Steelworkers?

2 A. When we do our training, they pay Road-Con to pay  
3 us. They have a percentage that they pay -- they pay  
4 the wages for us.

5 Q. Okay. But you're never getting a check through  
6 the Steelworkers, it's all coming through whatever  
7 company you're affiliated with, correct?

8 A. Correct.

9 MS. KIRBY: Okay. I have no  
10 further questions. I don't know if Michael  
11 has any, or Jonathan.

12 MR. MITCHELL: I don't have any  
13 questions.

14 MR. WEINERT: No questions from me.

15 MS. KIRBY: All right. I guess I  
16 talked slow enough that we took almost an  
17 hour, but we didn't take too long, so I'm  
18 happy about that.

19 Thank you for you time, Mr. Lacava.  
20 I appreciate it. Thank you.

21 - - -

22 (Deposition concluded at 1:38 p.m.)

23 - - -

24

25

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and  
evidence noted are contained fully and accurately in the  
stenographic notes taken by me in the foregoing matter,  
and that this is a correct transcript of the same.

Court Reporter - Notary Public

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# Exhibit N



Kevin J. Loftus  
October 6, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROAD-CON, INC., NESHAMINY : No. 2:19-cv-01667-JS  
CONSTRUCTORS, INC., LOFTUS :  
CONSTRUCTION, INC., PKF-MARK:  
III, AND SCOTT A. LACAVA :  
:  
Plaintiffs, :  
:  
v. :  
:  
CITY OF PHILADELPHIA AND :  
JAMES KENNEY, in his :  
Official capacity as Mayor :  
Of the City of Philadelphia :  
:  
Defendants. :

- - -

Wednesday, October 6, 2020

- - -

Videoconference deposition of KEVIN  
J. LOFTUS was taken before Kathryn Doyle, a Notary  
Public of the Commonwealth of Pennsylvania, on the  
above date, commencing at 2:23 p.m.

- - -

STREHLOW & ASSOCIATES  
54 FRIENDS LANE, SUITE 116  
NEWTOWN, PENNSYLVANIA 18940  
(215) 504-4622  
WWW.STREHLOWCOURTREPORTING.COM

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A P P E A R A N C E S:

ZIMOLONG, LLC  
BY: WALTER S. ZIMOLONG, ESQUIRE  
353 Lancaster Avenue  
Suite 300  
Wayne, PA 19087  
wally@zimolonglaw.com  
(215) 665-0842

Representing the Plaintiffs  
(Via Zoom.)

KANG HAGGERTY & FETBROYT LLC  
BY: MICHAEL S. WEINERT, ESQUIRE  
123 S Broad Street  
Suite 1670  
Philadelphia, PA 19109  
mweinert@khflaw.com  
(215) 525-5850

Representing the Mechanical and  
Service Contractors Association  
(Via Zoom.)

CITY OF PHILADELPHIA - LAW DEPARTMENT  
BY: AMY KIRBY, ESQUIRE  
1515 Arch Street  
15th Floor  
Philadelphia, PA 19102  
Amy.Kirby@phila.gov  
(215) 683-3566

Representing the City of Philadelphia.  
(Via Zoom.)

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I N D E X

WITNESS:

KEVIN J. LOFTUS

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(No exhibits were marked for identification.)

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1 - - - - -

2 (It is agreed by and between  
3 counsel that all objections, except as to the  
4 form of the questions, are reserved until the  
5 time of the trial.)

6 - - - - -

7 KEVIN J. LOFTUS, having been duly  
8 sworn according to law, was examined, and  
9 testified as follows:

10 - - - - -

11 PROCEEDINGS

12 - - - - -

13 THE COURT REPORTER: I have to read a  
14 statement into the record before we get  
15 started.

16 It is hereby stipulated and agreed by and  
17 between counsel for all parties present that  
18 pursuant to 231 Pa. Code Section 4002 this  
19 deposition is being conducted by video  
20 conference, that the court reporter, all  
21 counsel, and the witness are all in separate  
22 remote locations and participating via Zoom  
23 videoconference under the control of Strehlow &  
24 Associates Court Reporting Service, that the

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1 officer administering the oath to the witness  
2 need not be in the place of the deposition and  
3 the witness shall be sworn in remotely by the  
4 court reporter after confirming the witness's  
5 identity, that this video conference will not  
6 be recorded unless previously noticed as a  
7 videotaped deposition and that any recording  
8 without the express written consent of all  
9 parties shall be considered unauthorized, in  
10 violation of law, and shall not be used for any  
11 purpose in this litigation or otherwise.

12 It is further stipulated that exhibits may  
13 be marked by the attorney presenting the  
14 exhibit to the witness, and that a copy of any  
15 exhibit presented to a witness shall be emailed  
16 to or otherwise in possession of all counsel  
17 prior to any questioning of a witness regarding  
18 the exhibit in question.

19 And that all parties shall bear their own  
20 costs in the conduct of this deposition by  
21 video conference.

22 Is that agreeable?

23 MS. KIRBY: Yes. Amy Kirby for the City  
24 of Philadelphia, yes, that's acceptable.

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1 MR. ZIMOLONG: As to plaintiffs, yes.

2 The only other stipulation I'd put on the  
3 record is we reserve the right to read and  
4 sign -- the witness would like to read and  
5 sign, if you can put that on the record,  
6 please.

7 MR. WEINERT: And Michael Weinert agrees  
8 to the stipulation.

9 - - - - -

10 DIRECT EXAMINATION

11 - - - - -

12 BY MS. KIRBY:

13 Q Good afternoon, Mr. Loftus.

14 A Good afternoon.

15 Q My name is Amy Kirby. I'm an attorney  
16 with the City of Philadelphia and I'm going to be  
17 taking your deposition this afternoon.

18 Have you ever been deposed before?

19 A I have.

20 Q Okay. Has it been recently?

21 A No, a couple years.

22 Q Okay. I'll go over some ground rules  
23 since it's been a couple years, but feel free to ask  
24 questions if you have any.

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1 I'll be asking you questions. Please  
2 wait until I ask a full question before you start  
3 answering. That helps the court reporters to make  
4 sure she can hear us both.

5 When you respond to a question,  
6 please make sure that you have a verbal response and  
7 not just a nod of the head or a shake of the head so  
8 that she can take that down.

9 If you don't understand a question or  
10 if I talk to you too fast and you can't hear me,  
11 feel free to tell me to slow down or repeat a  
12 question.

13 If you have any follow-up concerns  
14 about a question, feel free to jump in and ask me  
15 about them.

16 I don't anticipate this will be a  
17 long deposition, but if you do need a break, of  
18 course, you're welcome to take one. I just ask that  
19 you don't take a break when there's a question  
20 pending. So you have to answer any question before  
21 then.

22 Is there any reason that you can't be  
23 truthful this afternoon?

24 A No reason.

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1 Q Okay. Let's start a little bit with your  
2 background.

3 So tell me about your current  
4 position.

5 A I'm president and CEO of Loftus  
6 Construction, Incorporated.

7 Q Okay. And how long have you been in that  
8 position?

9 A 26 years.

10 Q Okay. And just tell me, generally, a  
11 little bit about what your duties are?

12 A I'm responsible for the overall financial  
13 administration of the business, the procurement  
14 side, and I oversee operations.

15 Q Okay. So you said you're in charge of  
16 procurement.

17 Does that mean that you are in charge  
18 of choosing which project Loftus will bid on?

19 A That's correct.

20 Q Okay. Do you do that with anyone else in  
21 the office or is that just mainly your job?

22 A The chief estimator, I do it in  
23 conjunction with them.

24 Q Okay. Prior to your 26 years with Loftus,



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1 what did you do before then?

2 A I graduated from college at Drexel in  
3 1987. I worked for four years for Brandy  
4 Corporation on the Schuylkill Expressway and Vine  
5 Street reconstruction projects.

6 And I worked for a couple years in  
7 Maryland for Facchina Construction and a year for  
8 Agate Construction in Cape May County.

9 Q Okay. So is it fair to say you have the  
10 final authority on which projects you bid on for  
11 Loftus Construction?

12 A Yes, ma'am.

13 Q Okay. Tell me a little bit about Loftus,  
14 itself.

15 How long has Loftus been in business?

16 A We formed it in 1994. Our office is  
17 located in New Jersey. 90 percent of our work is in  
18 Pennsylvania.

19 We do heavy civil construction,  
20 primarily, bridges. We also do some dam  
21 reconstruction projects and heavy structures.

22 Q Okay. And forgive me, because I'm not  
23 good at math.

24 How many years was Loftus in business

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1 before you became the CEO or did you start Loftus?

2 A I started it.

3 Q Okay. Fair enough.

4 Is Loftus a member of the  
5 Pennsylvania Heavy and Highway Contractors  
6 Bargaining Association?

7 A Yes, ma'am.

8 Q Okay. How long have you been a member of  
9 the Heavy Highway Contractors Association?

10 A 23 years.

11 Q Okay. So you were on board, you were  
12 working for Loftus when you guys became a member?

13 A Yes, ma'am.

14 Q Tell me why you made the decision to  
15 become a member.

16 A Primarily to increase our ability to get  
17 qualified workers.

18 Q Okay.

19 A Rather than posting ads in newspapers, it  
20 gives us the opportunity to have a viable hiring  
21 haul.

22 Q Tell me a little bit, if you know, about  
23 the actual association. I mean, you're saying it  
24 helps you have a viable hiring haul.

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1                   What do they do for Loftus  
2     Construction?

3           A     Well, the association is the bargaining  
4     entity for the contractors working in conjunction  
5     with the United Steelworkers of America.

6           Q     Okay. So is it fair to say there's kind  
7     of like Loftus, the association and then the  
8     steelworkers, they are kind of a go between, the  
9     association is?

10          A     We're members of the association. I'd put  
11     us in line with the association.

12                   I'm on the executive committee, so  
13     I'm active in the association.

14          Q     Okay. And you're currently a member,  
15     correct?

16          A     Yes, ma'am.

17          Q     Okay. So you said you did generally civil  
18     construction, some damming projects, a couple of  
19     other types of things.

20                   Do you do heavy and highway  
21     construction?

22          A     Yes. Heavy and highway -- bridges falls  
23     within that realm. So majority of the work that I  
24     refer to as heavy bridges is heavy highway.

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1 Q Okay.

2 A We don't do road work. We sub that out.

3 Q Okay. How much of your business, like  
4 percentage-wise, is bridges?

5 A Right now, 100 percent.

6 Q Okay. Just generally, over the last five  
7 years?

8 A Generally, 80 to 90 percent.

9 Q Okay. And then the other 10 to 20 percent  
10 is dam --

11 A Foundations. We've done bulkheads. We've  
12 done dams.

13 Q Okay. How much of Loftus' business is in  
14 public works projects?

15 A Right now, 100 percent.

16 Q Okay. And again, last five years  
17 probably?

18 A 98 percent. We do very little private  
19 work. We did one job last year.

20 Q Okay. Was that a bridge job, that private  
21 job?

22 A It was a bulkhead in a residential -- I  
23 mean, a commercial development.

24 Q Okay. Tell me a little bit about -- we'll

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1 stick with this five year period.

2 What's the typical contract amount  
3 for Loftus?

4 A It does vary. Typical contract amount is  
5 between 2 million and 15 million.

6 Q Okay. And are most of those projects as  
7 primes or do you ever work as a subcontractor?

8 A I honestly can't remember the last time I  
9 worked as a sub.

10 Q Okay. Do you ever work on any smaller  
11 projects under that \$2 million threshold?

12 A Sure.

13 Q Okay. But not as often -- the typical  
14 projects are over 2 million?

15 A Right.

16 Q Okay. Tell me a little bit about the  
17 geographic area where Loftus works -- what states,  
18 what counties?

19 A Right now all of our work is in the five  
20 county area, so Philadelphia and the four suburban  
21 counties.

22 We also look at work in the southern  
23 counties of New Jersey -- Burlington County, Camden  
24 County.

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1                   We do very little work outside -- in  
2   Pennsylvania that's outside of the five county area.

3           Q       How about Delaware? Do you do any work  
4   there?

5           A       No.

6           Q       It's all PA and New Jersey?

7           A       Yes, ma'am.

8           Q       Okay. So in your time working in other PA  
9   counties or New Jersey, I guess all of your work, do  
10   you ever work -- do you ever sign on other project  
11   labor agreements?

12          A       No, ma'am.

13          Q       Okay. So do you recall in the last five  
14   years working on any projects with a project labor  
15   agreement?

16          A       In 26 years we've never.

17          Q       Okay. Fair enough. And is that by  
18   design? Do you avoid projects with project labor  
19   agreements or it just ends up that the projects you  
20   bid on don't have them?

21          A       We typically don't bid a job with a  
22   project labor agreement, because of -- our workers  
23   are all steelworkers.

24                   And the rules that are typically in a

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1 PLA are negotiated by someone other than a  
2 bargaining association. And we find them to be a  
3 challenge.

4 Q Okay. Have you ever bid on a project with  
5 a project labor agreement?

6 A No, ma'am.

7 Q Okay. Do you know of any project labor  
8 agreements that include the steelworkers in the  
9 areas that you work in?

10 A I'm not aware of any.

11 Q Okay. I want to talk a little bit about  
12 any business that Loftus has with the City of  
13 Philadelphia.

14 So does Loftus -- either you or  
15 someone in your company -- monitor the Philadelphia  
16 invitations to bid?

17 A Yes, ma'am.

18 Q Okay. And when you're monitoring those  
19 and looking at the projects, what factors do you  
20 consider when determining whether to bid on a City  
21 of Philadelphia project?

22 A Project scope, project size and our  
23 current backlog -- meaning, what periods of time we  
24 need work.

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1                   Contract times are typically very  
2 critical. If they give you two years to build a job  
3 that's going to take a year, it's more attractive  
4 than a job that's going to take all two years.

5           Q     Do you ever pass on projects that are  
6 shorter duration because you can find something with  
7 a longer duration somewhere else?

8           A     Yes.

9           Q     Okay. When you say scope, I'm assuming  
10 that means limited to your area of expertise?

11          A     Yes, ma'am.

12          Q     Okay. Do you ever look at projects to  
13 determine if they have a PLA and then determine not  
14 to bid on them?

15          A     Yes, ma'am.

16          Q     Okay. Does -- this is probably along the  
17 scope in size -- but does the cost of the project  
18 factor in to whether you bid on it or not?

19          A     Yeah. That's what I would refer to as the  
20 size. Typically, the contract amount -- estimated  
21 contract amount.

22          Q     Okay. Are there certain City departments  
23 that you work with more than others?

24          A     Typically, it's the Streets Department,



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1 especially in the last five years.

2 Q Okay. Would you consider the City of  
3 Philadelphia as, you know, one of your clients or  
4 one of your repeat, you know?

5 A It's certainly one of the markets that we  
6 track. And we bid their work when it suits our  
7 business model, along with SEPTA and PennDOT and  
8 various municipalities and counties.

9 Q In the last five years, approximately, how  
10 many jobs have you done for the City of  
11 Philadelphia?

12 A Two.

13 Q Which were those projects?

14 A 41st Street bridge in Southwest  
15 Philadelphia over SEPTA. And we did a smaller  
16 stream bank stabilization on the Schuylkill River.

17 Q And I'm assuming the 41st Street bridge  
18 was for Streets?

19 A Yes, ma'am.

20 Q Was the stream bank for Streets, also?

21 A No. It was Parks.

22 Q I don't know. But it sounds like that  
23 would be --

24 A It's not actually Parks, but it's that

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1 group.

2 Q Okay. And do you remember the dollar  
3 value of that 41st Street bridge project,  
4 approximately?

5 A 13 million.

6 Q Okay. I'm assuming that one did not have  
7 a PLA on it?

8 A That's correct.

9 Q Okay. What about the stream bank project?  
10 What was the dollar value?

11 A 700,000.

12 Q Okay. Again, I'm assuming that one didn't  
13 have a PLA on it either?

14 A Correct.

15 Q Okay. Are you familiar with the 15th  
16 Street project that's the subject of this  
17 litigation?

18 A Yes, ma'am.

19 Q Okay. Was Loftus interested in bidding on  
20 that project?

21 A Yes.

22 Q Did you bid on that project?

23 A I did not.

24 Q You did not, okay.

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1                   Were you prequalified to bid on that  
2 project?

3           A       Yes.

4           Q       Okay. So explain a little bit about that  
5 prequalification process.

6                   What did you have to submit and give  
7 to the City in order to be prequalified?

8           A       It's a four or five page packet where you  
9 list your qualifications, the projects you've done.  
10 I believe there's something on there that talks  
11 about financial capacity.

12          Q       Okay. And I understand you were  
13 recommended for qualification on that project; is  
14 that right?

15          A       Yes, ma'am.

16          Q       Be you didn't end up bidding?

17          A       No, ma'am.

18          Q       Why was that?

19          A       We picked up other work in the interim.

20                   And as I mentioned earlier, we  
21 balance out procurement efforts to match our current  
22 backlog. And our backlog was too large for us to  
23 handle 15th Street project.

24          Q       Okay. Are you familiar with the runway

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1 project that's the subject of this litigation?

2 A Vaguely. I didn't look at the plans. I  
3 just heard about it.

4 Q Okay. So it's fair to say that wasn't a  
5 project that you bid on?

6 A That's correct.

7 Q And it wasn't a project that you requested  
8 prequalification for?

9 A No.

10 Q Okay. Why was that?

11 A We don't do runway work.

12 Q Okay. You're answering all of my  
13 questions before I get to them. I'm just going  
14 through them to make sure I didn't miss anything.  
15 It happens all the time and I don't hate it. I  
16 appreciate it.

17 A I'd like to apologize --

18 Q No, I appreciate it.

19 I think you probably answered this,  
20 but I'll ask it kind of in a different way.

21 Has Loftus ever refrained from  
22 bidding on a City of Philadelphia public works  
23 project for a reason other than a PLA?

24 A Yes.

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1 Q And is it kind of that same answer you  
2 gave me before? Because you're looking at scope and  
3 size?

4 A Exactly.

5 Q Okay. And again, maybe you already  
6 answered this one in a different way.

7 Have you ever seen a City of  
8 Philadelphia project and said: Hey. This is  
9 perfect. This is within our scope, within size, but  
10 did not bid on it because there was a PLA?

11 A No.

12 Q Okay. How many employees does Loftus  
13 have -- I'll separate them.

14 How many management employees? Let's  
15 do it that way.

16 A Eighteen.

17 Q Okay. And they are all non-union  
18 employees?

19 A Yes, ma'am.

20 Q Okay. And so none of those are members of  
21 the Steelworkers, correct?

22 A Correct.

23 Q Okay. And none of them are members of  
24 another union, correct?

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1 A Correct.

2 Q Okay. So how many -- and are those 18  
3 employees permanent employees of Loftus?

4 A Yes.

5 Q Okay. Other than your 18 management  
6 employees, how many employees does Loftus have,  
7 let's say, right now?

8 A 38.

9 Q Okay. So that means we have 20 employees,  
10 if I'm doing my math right, who are steelworkers,  
11 correct -- is that right?

12 A No. It's 38 in addition to the  
13 management.

14 Q Oh, okay. So we have 38 employees.  
15 Are those union employees?

16 A 35 of the 38 are, yes.

17 Q Okay. And those 35, what union are they  
18 affiliated with?

19 A United Steelworkers of America.

20 Q And then the other three, what are they?

21 A They are shop employees. The bargaining  
22 agreement does not cover the shop -- mechanics.

23 Q Are they supervisors? I'm just curious.

24 A Yes, they are.

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1 Q Okay. But they are also temporary  
2 employees, so they are not employees of Loftus?

3 A Other than when we were suspended by the  
4 governor because of COVID, those gentlemen haven't  
5 been laid off in many years.

6 Q Okay.

7 A So I'm not sure what the definition of  
8 temporary is.

9 Q Sure. Fair enough.

10 I guess they have not permanent  
11 employees of Loftus --

12 A They are hourly employees, if that makes a  
13 distinguishment.

14 MR. ZIMOLONG: I'm not really sure what  
15 you mean by permanent, but it sounds like they  
16 are salary employees. They've been there for  
17 10 years.

18 THE WITNESS: They are hourly, but they  
19 consider themselves permanent and so do I.

20 MS. KIRBY: Okay.

21 BY MS. KIRBY:

22 Q So for the steelworkers employees, these  
23 35 you have right now, when you don't have work for  
24 them, do they go work for other contractors?

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1 A Yes.

2 Q Okay. Is it fair to say these 35  
3 employees, are they generally employed by Loftus or  
4 is it kind of like 100 percent, 80 percent, 50/50  
5 with you and other contractors?

6 A I would say that of the 35, 25 haven't  
7 been laid off, again, other than when we were  
8 suspended by the governor in well past the five year  
9 window you were referring to.

10 And the others, with some seasonal  
11 transitions, they may get laid off for a few months  
12 during the winter.

13 At that point, it's up to them  
14 whether they go back to work or wait to be  
15 re-called.

16 Q Okay. Since you're doing kind of, I'll  
17 call it, a discrete construction, you're just doing  
18 bridge work, do you generally get the same  
19 steelworker employees to come work for Loftus?

20 A We don't layoff, typically. When we bring  
21 steelworkers in, we keep them.

22 When we do lay them off for seasonal,  
23 they are aware when they are laid off if they are  
24 expected to be recalled. And typically, we recall



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1 everybody. We don't terminate by layoff.

2 Q I see. Is bridge work pretty seasonal?

3 A No. Certain parts of bridge work are  
4 seasonal -- the temperature and weather control.  
5 But there's a lot of work that we do that we can do  
6 12 months a year.

7 Q Okay. In your declaration -- and I can  
8 show it to you if you don't recall this -- it says  
9 that the employees of Loftus have chosen the United  
10 Steelworkers as their bargaining representative.

11 How does that process work? I'm  
12 trying to figure out what the word chosen means?

13 A They were referred to us upon request by  
14 the steelworkers. They had already reached an  
15 agreement to be a steelworker.

16 Q So this is -- the individual employees are  
17 deciding they want to be affiliated with the  
18 steelworkers?

19 A Correct.

20 Q Loftus had no say in that --

21 A No. When we first signed, we had three  
22 employees that joined the union by their choice.  
23 Everybody else that works for us has been referred  
24 to us by the Union as a union member.

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1 Q Okay. Do you know, could these employees  
2 have chosen another union to represent them?

3 A Sure.

4 Q Okay. Do you know if any of these  
5 steelworker employees work with any unions in  
6 addition to the steelworkers?

7 A I'm not aware of any.

8 Q To your knowledge, are they allowed to?

9 A I don't believe so. I'm not really sure.  
10 I've never seen the documents that they sign as an  
11 employee for union members, sorry.

12 Q Fair enough.

13 To your knowledge, could they chose  
14 another union to represent them in the future?

15 A I don't know. I've never talked to the  
16 union about that.

17 Q Sure. Another statement in your  
18 declaration is: Because Loftus maintains a  
19 collective bargaining agreement with the United  
20 Steelworkers, they cannot perform work of any City  
21 of Philadelphia public works project subject to a  
22 project labor agreement with its current workforce.

23 A Correct.

24 Q So when you say current workforce, could

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1 it perform -- I guess I want to understand what  
2 current workforce means.

3 That's means these 35 steelworkers,  
4 correct?

5 A Correct.

6 Q Could you perform City of Philadelphia  
7 public works projects with another workforce?

8 A With or without a PLA?

9 Q With a PLA.

10 A No. Because we're obligated to use the  
11 bargaining association, that's who we chose to use  
12 and that's our business model. That's who we prefer  
13 to use.

14 Q Okay. Could you chose to disaffiliate  
15 with the Steelworkers if you wanted to?

16 A I'd have to ask Andrew Levy, the  
17 bargaining association attorney.

18 That's not something I've ever  
19 considered, so I don't know.

20 Q Okay. So it's fair to say that you can  
21 perform City of Philadelphia public works contract  
22 without PLAs on them, correct?

23 A Absolutely.

24 Q Okay. Have you ever asked an employee of

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1 Loftus to change their union membership so that  
2 Loftus could bid on a City of Philadelphia project?

3 A No.

4 Q Okay.

5 A I was waiting for you to say with the PLA.

6 Q Essentially, I guess, I would have to say  
7 with a PLA, but either way.

8 Do you anticipate asking any of your  
9 employees to change their union affiliations so you  
10 can benefit on a city public works project with a  
11 PLA?

12 A No.

13 Q Would you bid on a City of Philadelphia  
14 public works project that required a PLA if the  
15 United Steelworkers were a member of that PLA?

16 A Not without having seen the agreement.  
17 The agreements are all drafted by different  
18 individuals and it may not be something that we can  
19 comply with.

20 The project labor agreement, by  
21 virtue of its term, is an agreement that's  
22 structured between, typically, as I understand it,  
23 the unions and the owner -- in this case, the City  
24 of Philadelphia.

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1                   They then give us that agreement and  
2 we have a choice to play by those rules or not play.

3           Q       Okay.

4           A       So I can't answer your question without  
5 seeing the agreement.

6                   Every agreement I've read is  
7 different.

8           Q       What terms or concerns would you have --  
9 what would you be looking for if you were looking at  
10 the PLA -- assume the Steelworkers are included, so  
11 you're over that hurdle.

12                   What other things would you be  
13 looking for in that PLA?

14           A       Anything that's different than my  
15 agreement with the Steelworkers. Any departure from  
16 how we currently do business.

17           Q       And honestly, I want to understand what  
18 that means.

19                   If you can give me an example of a  
20 term that would not be appropriate for something  
21 that wouldn't allow you to bid on a project.

22           A       The agreement that we have with the  
23 Steelworkers allows a worker to perform a specific  
24 trade that's needed that day. He's not precluded

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1 from doing a trade.

2 As an example, if a carpenter wants  
3 to finish concrete, he can if he's skilled enough.  
4 Whereas some of building trades, that portability  
5 may not be allowed.

6 Q Okay. Any other examples or any other  
7 thing you'd be looking at?

8 A That's the best one I can come up with.

9 Q Okay. Fair enough.

10 MS. KIRBY: I think that's it. Let me  
11 take 30 seconds to look through my notes.

12 - - - - -

13 (Whereupon a discussion was held off the record.)

14 - - - - -

15 MS. KIRBY: I think that's it. I told you  
16 I'd be pretty quick -- unless Wally has any  
17 follow up or Michael.

18 MR. WEINERT: I don't have anything.

19 MR. ZIMOLONG: Kevin, just stop your video  
20 and mute.

21 - - - - -

22 (Whereupon a discussion was held off the record.)

23 - - - - -

24 CROSS-EXAMINATION

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1                               - - - - -

2       BY MR. ZIMOLONG:

3               Q       Good afternoon, Mr. Loftus. I wanted to  
4       just talk to you briefly about your testimony  
5       regarding the 15th Street bridge project.

6                               Is that okay?

7               A       Yes, sir.

8               Q       Okay. Did I hear your testimony correctly  
9       that Loftus decided to not submit a bid on the 15th  
10       Street project because at the time, it was busy with  
11       other work?

12              A       That's correct.

13              Q       Okay. In any event, if Loftus was not  
14       busy with other projects -- is my understanding  
15       correct -- that it would not have submitted a bid  
16       because it had a PLA?

17              A       Correct.

18                           MR. ZIMOLONG: I don't have anything  
19       further.

20                           MS. KIRBY: Just a brief follow up.

21                               - - - - -

22                               REDIRECT EXAMINATION

23                               - - - - -

24       BY MS. KIRBY:

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1           Q     Mr. Loftus, are you aware that the PLA was  
2 removed from the 15th Street project?

3           A     Yes.

4           Q     Okay. So knowing that the PLA was removed  
5 and -- would you have bid on that project or did you  
6 still have other projects that became more  
7 important?

8           A     In the interim from when the project was  
9 originally advertised until the PLA was removed, we  
10 picked up other work. So it was no longer an  
11 attractive project for us because of our business  
12 model.

13          Q     Okay. But it wasn't based on the fact  
14 that there was a PLA or not a PLA on the project?

15          A     No.

16                MS. KIRBY: Okay. Nothing further from  
17 the City.

18                MR. ZIMOLONG: Nothing from me.

19                       - - - - -

20       (Whereupon the deposition concluded at 2:53 p.m.)

21                       - - - - -

22

23

24



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C E R T I F I C A T I O N

I, hereby certify that the  
proceedings and evidence noted are  
contained fully and accurately in the  
stenographic notes taken by me in the  
foregoing matter, and that this is a  
correct transcript of the same.

---

Kathryn Doyle  
Court Reporter - Notary Public

(The foregoing certification of  
this transcript does not apply to any  
reproduction of the same by any means,  
unless under the direct control/or  
supervision of the certifying reporter.)

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<b>A</b>	2:18	<b>back</b> 24:14	<b>building</b> 30:4	15:12,20	1:3	<b>current</b> 8:3	<b>direct</b> 3:5
<b>ability</b> 10:16	<b>Andrew</b>	<b>background</b>	<b>bulkhead</b>	16:22 17:2	<b>contained</b>	15:23 19:21	6:10 33:17
<b>Absolutely</b>	27:16	8:2	12:22	17:10 19:7	33:5	26:22,24	<b>disaffiliate</b>
27:23	<b>answer</b> 7:20	<b>backlog</b>	<b>bulkheads</b>	20:22 21:7	<b>contract</b> 13:2	27:2	27:14
<b>acceptable</b>	21:1 29:4	15:23 19:22	12:11	26:20 27:6	13:4 16:1	<b>currently</b>	<b>discrete</b>
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Kevin J. Loftus

October 6, 2020

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# Exhibit O

Thomas Isenberg  
September 30, 2020

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -  
ROAD-CON, INC., NESHAMINY : CIVIL ACTION  
CONSTRUCTORS, INC., LOFTUS : NO. 2:19-cv-01667-JS  
CONSTRUCTION, INC., :  
PKF-MARK III, and SCOTT A. :  
LACAVA :  
Plaintiffs, :  
-V- :  
CITY OF PHILADELPHIA and :  
JAMES KENNEY, IN HIS :  
OFFICIAL CAPACITY AS MAYOR :  
OF THE CITY OF PHILADELPHIA :  
Defendants. :

- - -  
Wednesday, September 30, 2020  
- - -

ORAL ZOOM DEPOSITION OF THOMAS  
ISENBERG, taken pursuant to the Subpoena, held remotely  
and by Zoom videoconference in Pennsylvania, commencing  
at 10:00 a.m., before SHARON RICCI, RMR, CRR - Notary  
Public there being present.

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September 30, 2020

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A P P E A R A N C E S:

ZIMOLONG, LLC

BY: WALTER S. ZIMOLONG, ESQUIRE  
P.O. Box 552  
Villanova, PA 19085  
(215) 665-0842  
wally@zimolonglaw.com  
Representing the Plaintiffs

KANG, HAGGERTY & FETBROYT, LLC

BY: MICHAEL SCOTT WEINERT, ESQUIRE  
123 S. Broad Street, Suite 1670  
Philadelphia, PA 19109  
(215) 525-5850  
mweinert@khflaw.com  
Representing the Intervenors

CITY OF PHILADELPHIA LAW DEPARTMENT

BY: LYDIA FURST, ESQUIRE  
AMY KIRBY, ESQUIRE  
1515 Arch Street, 15th Floor  
Philadelphia, PA 19102  
(215) 683-3573  
lydia.furst@phila.gov  
amy.kirby@phila.gov  
Representing the Defendants



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I N D E X

WITNESS	PAGE
THOMAS ISENBERG (Witness sworn)	5
EXAMINATION BY:	
MS. FURST:	6

- - -

E X H I B I T S

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ISENBERG 1	CONTRACT	19
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ISENBERG 3	Affidavit	25

- - -

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1 COURT REPORTER: Counsel, I will  
2 read a stipulation into the record. Please  
3 bear with me, as it is long.

4 It is hereby stipulated and agreed  
5 by and between counsel for all parties present  
6 that pursuant to 231 Pa. Code 4002 this  
7 deposition is being conducted by Zoom  
8 conference, that the court reporter, all  
9 counsel, and the witness are all in separate  
10 remote locations and participating via Zoom  
11 conference meeting under the control of  
12 Strehlow & Associates Court Reporting Service,  
13 that the officer administering the oath to the  
14 witness need not be in the place of the  
15 deposition and the witness shall be sworn in  
16 remotely by the court reporter after  
17 confirming the witness's identity, that this  
18 Zoom conference will not be recorded unless  
19 previously noticed as a videotaped deposition  
20 and that any recording without the express  
21 written consent of all parties shall be  
22 considered unauthorized, in violation of law,  
23 and shall not be used for any purpose in this  
24 litigation or otherwise.

25 It is further stipulated that

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1 exhibits may be marked by the attorney  
2 presenting the exhibit to the witness, and  
3 that a copy of any exhibit presented to a  
4 witness shall be emailed to or otherwise in  
5 possession of all counsel prior to any  
6 questioning of a witness regarding the exhibit  
7 in question. All parties shall bear their own  
8 costs in the conduct of this deposition by  
9 Zoom conference.

10 So stipulated, counsel?

11 MS. FURST: Lydia Furst for the  
12 City of Philadelphia. Yes, I agree.

13 MR. ZIMOLONG: Wally Zimolong.  
14 Yes, we agree.

15 And I would put one thing on the  
16 record. I don't know if -- that was kind of  
17 long-winded. I didn't hear it. But before I  
18 forget, the witness would like to read and  
19 sign.

20 Thank you.

21 MR. WEINERT: And Michael Weinert.  
22 I agree to the stipulation.

23 ...THOMAS ISENBERG, after having  
24 been first duly sworn, was examined and  
25 testified as follows:

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September 30, 2020

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— — —  
DIRECT EXAMINATION

— — —  
BY MS. FURST:  
Q. Okay. Good morning, Mr. Isenberg. How are you?  
A. Thank you. Good morning.  
Q. So I introduced myself before we went on the  
record, but my name is Lydia Furst, and I'm an attorney  
for the City of Philadelphia and I represent the City in  
this case.  
Before we get started, have you ever had your  
deposition taken before?  
A. No, I've never given a deposition before.  
Q. Okay. I'll just go over some ground rules really  
briefly. The first thing to remember is that Ms. Ricci  
is taking down everything we say, so we need to remember  
to provide verbal answers instead of a shake of a head  
or a nod of the head for yes or no, for example.  
We also want to avoid talking over each other,  
so I'm going to do my best to wait until you're done  
your answer to give the next question. And if you could  
make sure I'm done asking my question before you start  
answering, that will help her clearly take down  
everything we're saying.  
Does that sound okay?

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1 A. It does.

2 Q. Okay. And if you, at any time, need to take a  
3 break, that's completely fine. You can just let us  
4 know. I would just ask that you answer whatever  
5 question is pending before you ask to take a break.

6 Is that all right?

7 A. Yes.

8 Q. Great. And if, at any time, you don't understand  
9 the question I've asked or, you know, there's a  
10 technical issue and you aren't able to hear me, just let  
11 me know and I can repeat the question for you. Okay?

12 A. Okay.

13 Q. Mr. Isenberg, did you meet with anyone to prepare  
14 for this deposition?

15 A. Counsel.

16 Q. And did you review any documents to prepare for  
17 this deposition?

18 A. I may have taken a quick look at the affidavit  
19 like yesterday or the day before, but that was about it.

20 Q. And that's your affidavit?

21 A. Correct.

22 Q. Okay. And were you present at the deposition of  
23 Al Hoffman last week?

24 A. I was.

25 Q. Okay. And were you also present at the

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1 deposition of Scott Lacava last week?

2 A. I was not.

3 Q. Mr. Isenberg, what is your current job?

4 A. My title is director of compliance and contract  
5 controls at PKF-Mark III.

6 Q. How long have you been in that position?

7 A. About seven and a half years. March will be  
8 eight years.

9 Q. And how long have you been with the company, PKF?

10 A. Same amount of time. I came in as a director of  
11 contract and contract controls.

12 Q. So immediately prior to joining PKF, what did you  
13 do?

14 A. I was in private practice as a lawyer for about  
15 18 years prior to that.

16 Q. Oh, interesting. And what kind of law did you  
17 practice?

18 A. When I first got out of school, I worked at a  
19 general practice firm in Lancaster, and then I moved to  
20 Harrisburg and was a commercial litigator for probably  
21 about six years, and then moved to the Harrisburg office  
22 of Duane Morris and started working with a partner who  
23 was -- who did a lot of construction work, and so after  
24 that, it was mostly representing contractors and  
25 subcontractors.

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1 Q. Okay. Interesting. So can you just describe for  
2 me briefly what your duties are as compliance of  
3 contract controls manager or director at PKF?

4 A. So I wear a lot of hats. That's the title they  
5 give me, but I, obviously, handle all of our contracts  
6 with any contractor, any subs, suppliers. I handle all  
7 of our insurance-related claims.

8 And when I say "handle," pretty much liaison  
9 with outside counsel or defense counsel or any  
10 third-party liability claims, workers' compensation.  
11 And my department is responsible for our HR functions,  
12 hiring, transferring, advertising for jobs, things along  
13 those lines.

14 I serve basically as in-house counsel for the  
15 firm as well when needed. I am the BDE liaison officer  
16 for the company, the firm's EEO officer. I sit on the  
17 apprentice board for our Steelworker's Union, so I work  
18 with a lot of the apprentices. That's probably about  
19 it, but I'm sure there's more stuff as things come up.

20 Q. Okay. Do you have any role in selecting which  
21 project PKF will bid on?

22 A. Not the final determination of any jobs, but if  
23 there's a question about a particular job, our chief  
24 estimator or one of our other corporate officers might  
25 come to me and have a question or might input on a

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1 particular risky item. You know, there's some kind of  
2 contractual risk or something involved. They would help  
3 me to take a look at it, but I don't get to say yes or  
4 no on any job.

5 Q. Okay. And are you generally aware of PKF's  
6 process for selecting which projects to bid on?

7 A. Generally, yes.

8 Q. And so who is the person with decision-making  
9 authority as to which projects PKF will bid on?

10 A. I can't say there's one person with ultimate  
11 authority. We have a chief estimator who is our -- is  
12 one of our vice presidents. He's in charge of,  
13 obviously, pulling all the estimates together,  
14 evaluating jobs, looking for new jobs to bid.

15 If he has questions or concerns, the other  
16 three corporate officers -- well, yes, the other three  
17 corporate officers, two VPs and a president, will have  
18 input. And generally they'll come to a consensus as to  
19 whether there's a particular job or jobs that our chief  
20 estimator may have a question or concern about.

21 Q. Okay. So what's the name of the chief estimator  
22 and VP?

23 A. His name is Mitch Baland, B-A-L-A-N-D.

24 Q. And what are the names of the other three  
25 individuals you mentioned who are involved in selecting



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1 projects?

2 A. Well, Mitch is the prime selector of projects.  
3 We have a president, his name is Glenn Ely, E-L-Y; we  
4 have another vice president, Larry Keough, K-E-O-U-G-H,  
5 and another vice president, Mark Reisinger,  
6 R-E-I-S-I-N-G-E-R. Each VP has a specialty sort of  
7 niche area. So if there's a drilling project, Mr. Keogh  
8 handles our drilling operations and so he might talk to  
9 Mitch. Mr. Reisinger handles more of our mechanical or  
10 electrical component. So if we're doing a big pump  
11 station or waste management treatment plant, he may talk  
12 to Mitch as well, yeah, that looks like a good job, you  
13 know, that didn't look like a good job, based on all the  
14 other sort of factors that go into selecting jobs in  
15 terms of workforce, how long the job is, where it's  
16 located, things along those lines.

17 Our backlog always is an issue, whether we have  
18 too much or too little, things like that.

19 Q. Okay. You mentioned that sometimes your input is  
20 sought in the selection process if an issue comes up.

21 Can you provide some examples of when you would  
22 be asked about potentially being on a project?

23 A. Well, often times, they'll have me look at what  
24 the -- if there's any issues with the liquidated damages  
25 or particular milestone dates that are out of contract,

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1 to assess that level of risk. You know, if there's a  
2 project labor agreement on the job, he'll basically tell  
3 me there's a PLA on this job, take a look at it.

4 You know, are the Steelworkers included in the  
5 PLA or in the list of, you know, quote, unquote, proper  
6 union affiliation, things like that.

7 Q. Okay. So going back to the selection process for  
8 which projects PKF will bid on, can you just list all  
9 the factors you are aware of that go into the decision  
10 as to whether to bid on a project?

11 A. I can give you at least what my understanding is.  
12 I'm sure there are others based on the technical aspect.  
13 Remember, all these guys were all engineers. I'm just  
14 the poor guy that went to law school because I'm not  
15 good at math.

16 So the technical concept, I don't have any  
17 bearing on, but, you know, one of the big ones would be  
18 bonding capacity. Our bonding company sets a certain  
19 capacity that we either are prohibited or need to seek  
20 permission to bid a job over our preapproved bonding  
21 capacity. You know, our workforce.

22 If we currently -- as an example, if we  
23 currently have a heavy electrical job going on, we would  
24 in all likelihood forego another large electrical job  
25 because we wouldn't necessarily have the available

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1 workforce to man both projects. You know, there's a lot  
2 of factors in terms of our backlog.

3 If we had a lot of backlog, I'm sure  
4 there's -- you know, we have a lot of work in the  
5 pipeline, I'm sure there's many jobs we don't even look  
6 at because we have a fair amount of back work. If the  
7 backlog is low, we may look at some other jobs that we  
8 might not normally look at.

9 But current status of the economy is always  
10 something that is to be considered, what projects we see  
11 in the pipeline that may look more attractive based on  
12 what we do and what we do well. You know, if we know  
13 there's one coming several months down the road, we may  
14 forego other jobs and vice versa.

15 So things along those lines. That's probably  
16 what I am privy to. The other things would be more in  
17 line with the technical aspect of the project.

18 Q. I understand. And you mentioned the word  
19 "backlog."

20 Can you just explain what you mean by that?

21 A. Well, a lot of our projects are several years  
22 long, almost all of them are, and so the backlog is how  
23 much work we may have on our current project still yet  
24 to do, and so that backlog, if that's -- you know, if  
25 there's \$150 million or \$300 million worth of work yet

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1 to do, again, a lot of that goes into whether we're  
2 manned properly to be able to bid more work with a large  
3 backlog, or we have a small backlog where a lot of our  
4 work is wrapping up, that we need to go get more.

5 Q. Okay. Do you know if the amount of the contract  
6 or the estimated cost of the project plays any role in  
7 the selection process?

8 A. Well, it does, again, based on our bonding  
9 capacity, you know, where we would not without bonding  
10 company approval -- I don't know what the hard and fast  
11 rule is, but I know anything close to like \$400 million  
12 we would need the bonding company to say, yes, you can  
13 go ahead and bid that job.

14 You know, we tend to like bigger jobs. We  
15 rarely do things -- we rarely do many jobs less than 3  
16 to \$5 million. We have had some smaller ones where  
17 we're just doing a little niche operation, if we have a  
18 little drilling job for, we'll say, Amtrak, that may be  
19 5, \$600,000, but there's only been a couple of those  
20 since I've been here. Most of them are larger  
21 projects.

22 Q. What is the limit for the bonding capacity?

23 A. I'm not exactly sure, to be honest with you. My  
24 recollection is it's somewhere around 300 million, but  
25 that's my recollection.

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1 Q. And you mentioned that one of the things you do  
2 is check -- look at the PLA, if there's a PLA  
3 requirement for a project; is that right?

4 A. Right.

5 Q. Does PKF ever bid on projects that have a PLA  
6 requirement?

7 A. Well, that's a -- I would say we have bid on a  
8 project as a general contractor that has a PLA on it  
9 because the Steelworkers were included, the United  
10 Steelworkers Union was included as a signatory union.  
11 This was before my time.

12 But I do know of the job and it did have a PLA,  
13 but the Steelworkers were included. I'm assuming there  
14 was some wrangling to get them included, but they were  
15 included, and we were low on that project. It was a New  
16 Jersey DOT project.

17 Q. Okay. And that was before your time at PKF, you  
18 said?

19 A. The project, yes.

20 Q. Do you know around approximately what year that  
21 project was?

22 A. I don't. I don't.

23 Q. Okay. Where is PKF located?

24 A. Our home office is located in Newtown, Bucks  
25 County, Pennsylvania.

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1 Q. And does PKF have other offices?

2 A. Well, we have field offices at our projects.  
3 Some projects do, some projects don't, but we do have  
4 field offices at -- most of our projects we put a  
5 trailer or two that have offices in there.

6 Q. Okay. I understand. I won't ask you about all  
7 of those.

8 When did PKF commence business?

9 A. We just did our 50 years, so 1969. That wasn't  
10 PKF-Mark III at the time. It was PKF, and then, I  
11 think, maybe six or seven years later, they merged with  
12 a company called Mark III that was more mechanical. But  
13 since its initiation, it has been since 1969.

14 Q. Is PKF presently affiliated with the Steelworkers  
15 Union?

16 A. That is correct.

17 Q. When did that relationship start?

18 A. I do not know the specific date. I believe it  
19 was in the early 90's.

20 Q. Okay. Are you aware of any time there's been a  
21 lapse in PKF's affiliation with the United Steelworkers?

22 A. Not since we signed on, no.

23 Q. Okay. I am going to show you a couple of  
24 exhibits right now, Mr. Isenberg. I'm going to do a  
25 share screen.

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1 - - -

2 (A brief discussion was held off  
3 the record.)

4 - - -

5 BY MS. FURST:

6 Q. Mr. Isenberg, are you able to see this? And we  
7 can just look at the first page.

8 A. Well, I'm only seeing your screen. I'm not  
9 seeing a document yet.

10 Q. Okay. I'm going to try that again. Sorry about  
11 that, everyone. All right.

12 Are you seeing the document now, Mr. Isenberg?

13 A. I am.

14 Q. Okay. Is this the agreement between PKF and the  
15 Steelworkers?

16 A. Not the current one. That looks like it's from  
17 '15 to '17.

18 Q. Okay. So is it accurate that this agreement  
19 started January 1st, 2015 and expired December 31st,  
20 2017?

21 A. It would appear that way, yes.

22 Q. Okay. Do you know if the agreements between PKF  
23 and the Steelworkers are typically for three years like  
24 this one is?

25 A. They are.

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1 Q. Okay. One second while I get the next document.

2 Okay.

3 Are you seeing this document on the screen,  
4 Mr. Isenberg?

5 A. Yes.

6 Q. And is this the present agreement, the current  
7 agreement, between PKF and the Steelworkers?

8 A. I believe that to be the case.

9 Q. Okay. And this agreement was effective January  
10 1st, 2019, and it will expire December 31st, 2021.

11 Is that correct?

12 A. That seems to be the case, correct.

13 Q. And this one is also a three-year contract it  
14 looks like; is that right?

15 A. It appears that way.

16 Q. Okay. So was there any agreement between PKF and  
17 the Steelworkers for 2018?

18 A. Well, we were -- I don't know if I have a  
19 document that does just the one year. I know after the  
20 last CBA expired, our labor lawyer entered into some  
21 kind of Evergreen agreement because the president or the  
22 director of the Local Steelworkers 15024 had been -- or  
23 had left and there was never a lapse, but we didn't get  
24 an agreement done.

25 So when we did the next agreement, we just



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1 started it in 2019 when we entered into it. So there  
2 was some kind of Evergreen agreement is what he called  
3 it. I don't know what that means in the labor world.  
4 I'm not a labor guy.

5 Q. Okay. So for 2018, did you consider PKF to be  
6 bound by an agreement with the Steelworkers?

7 A. Yes, under the same terms as the '15 -- whatever  
8 the last one was, '15 to '17 or '14 to '17, under the  
9 same terms. Those terms continued until then we got  
10 into the '19 to '21 term.

11 MS. FURST: Okay. And just to  
12 clarify the record, I failed to state the  
13 exhibit number. I'll mark the exhibit number.

14 So the first document I pulled up  
15 is going to be Isenberg 1 and the second  
16 document is going to be Isenberg 2.

17 - - -

18 (Exhibits Isenberg 1 and Isenberg 2  
19 marked for identification.)

20 - - -

21 BY MS. FURST:

22 Q. What types of construction work does PKF do?

23 A. We would be what you call a heavy and highway  
24 contractor. So generally speaking, we like to be the  
25 prime contractor and contract with the owner. We have

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1 done some subcontract work, but not very often.

2 And so we build bridges, highways, things like  
3 that. We don't do any of our own paving, but we build  
4 the bridges and roadways, and then we do waste water  
5 treatment plants, other kind of plant work, pump station  
6 work. That would be the more heavy side of the heavy  
7 highway contract.

8 Q. Does PKF do any building construction?

9 A. Commercial, like banks and Wal-Marts and stuff  
10 like that, no. There might be buildings on some of our  
11 projects that we build.

12 We did a job for SEPTA where we built a train  
13 station down at the Secane Station, but not commercial  
14 building, per se.

15 Q. Okay. So just to clarify, does PKF ever do  
16 Public Works projects that are purely building  
17 construction projects?

18 A. Don't --

19 MR. ZIMOLONG: Objection to form.

20 THE WITNESS: I don't understand  
21 the question. We are -- for the most part,  
22 99.8 percent of our work is Public Works. I  
23 don't know what you mean by public building  
24 construction. We don't build high-rises and  
25 things like that.

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1 BY MS. FURST:

2 Q. Understood that. I think what I'm asking is  
3 would PKF ever do a -- ever do a construction project  
4 that was a building construction project?

5 MR. ZIMOLONG: I object to the  
6 form. I think you should -- we need  
7 to --

8 THE WITNESS: It's the term  
9 "building construction project" I'm not quite  
10 understanding. We've had jobs that have  
11 buildings on them, I can say that.

12 BY MS. FURST:

13 Q. So when you say that you had jobs that have  
14 buildings on them, is PKF doing the construction of the  
15 building?

16 A. Well, it depends what -- it depends what work  
17 activity is required for that building. In other words,  
18 we would, generally speaking, not put a roof on the  
19 building and would subcontract that out.

20 We would, generally speaking, do the foundation  
21 and the drilling work for the building. We might put  
22 the doors and windows in or we might sub that out,  
23 depending on what kind of price we get from the  
24 subcontractor willing to do the same work. So that's  
25 about what I can give you on that.

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1 Q. Okay. When PKF uses subcontractors for its  
2 projects, do the terms of this agreement with the  
3 Steelworkers apply to the subcontractor as well?

4 A. If the subcontractor has a bargaining agreement  
5 with the Steelworkers, it would. As a Steelworker  
6 contractor, we can sub work, we're allowed to sub work  
7 to building trade unions and we're allowed to sub work  
8 to non-union merit shop subcontractors as well, and we  
9 do both. We've had plenty of union subs on our jobs,  
10 other union subs on our jobs.

11 Q. In what states does PKF do construction work?

12 A. Most of our work traditionally is in New Jersey.  
13 We have done work in Pennsylvania and are currently  
14 doing some work in Pennsylvania generally within the  
15 five counties. I say five counties surrounding  
16 Philadelphia area.

17 We have done some work for Delaware DOT and  
18 we've done a little bit of work in Maryland as well. I  
19 mentioned like our Amtrak jobs, we've done some work for  
20 them, drilling work for Amtrak down in Maryland. But  
21 that's it.

22 I don't think -- years and years and years ago  
23 PKF did some work down in the Carolinas, but that's  
24 probably been 20 years.

25 Q. Okay. So approximately what percentage of PKF's

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1 work is in Pennsylvania?

2 A. Currently very little. We're wrapping up about a  
3 \$50 million pump station job that is through PennDOT in  
4 Bucks County and Philadelphia County, but that's getting  
5 wrapped up.

6 A couple years ago we had the big turnpike,  
7 I-95 connector project, that was like \$150 million. So  
8 while that was running, a good portion of our  
9 work -- it's all really a dollar-based concept. Right  
10 now probably not a whole heck of a lot in Pennsylvania.

11 Q. How many employees does PKF have?

12 A. Hourly or salary or both?

13 Q. Let's start with salary. How many salaried  
14 employees does PKF have?

15 A. I think we have about 65 or 67 salaried folks.  
16 Somewhere in that general vicinity.

17 Q. Okay. And are the salaried employees management  
18 employees or tradespeople or both?

19 A. Most of them we would classify as supervision,  
20 management, supervision. We have a couple of folks who  
21 work at our equipment yard who are -- you know, work on  
22 our equipment, and things along those lines, that you  
23 wouldn't qualify as supervision, but they are not  
24 necessarily tradesmen.

25 Q. Okay. So the salaried employees at PKF, are they

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1 members of the Steelworkers Union?

2 A. No.

3 Q. So how many hourly employees does PKF have?

4 A. That, too, will vary based on the amount of work  
5 we have going on. Right now I'm not exactly sure. I  
6 think we're probably in the 70, 75.

7 We've been as high, depending if we're really  
8 busy, to 200 hourly folks.

9 Q. And are all of the hourly employees members of  
10 the Steelworkers Union?

11 A. That is correct.

12 Q. And are the hourly employees hired on a project  
13 by project basis?

14 A. That's a -- well, I could say no. We have many  
15 longstanding hourly workers who go from project to  
16 project who may have been with us 20, 25 years. If  
17 there is a project that we need more manpower, we will  
18 go out and find new employees who may be around just for  
19 that project, depending on what the next project holds.

20 If we have more work, we'll keep them on. And  
21 if they're good workers, we'll keep them on and send  
22 them to the next project. But the vast majority of our  
23 folks are -- go from project to project and stay with us  
24 as a career.

25 Q. Okay. I'm going to show you what I'm going to

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1 mark as Isenberg Exhibit 3.

2 Just give me one moment.

3 - - -

4 (Exhibit Isenberg 3 marked for  
5 identification.)

6 - - -

7 BY MS. FURST:

8 Q. Mr. Isenberg, do you recognize this document?

9 A. I do.

10 Q. And what is it?

11 A. It's an affidavit that was incorporated into some  
12 document in this present litigation.

13 Q. I'm just scrolling down to the bottom of your  
14 affidavit, paragraph 13, which reads: "Because PKF  
15 maintains a collective-bargaining agreement with the  
16 United Steelworkers, it cannot perform work on any City  
17 of Philadelphia Public Works subject to a project labor  
18 agreement with its current workforce."

19 A. Correct, that's what it says.

20 Q. What does the phrase "current workforce" mean in  
21 this paragraph?

22 A. With our current workers, as of whatever date  
23 that was and currently now, our current workers, meaning  
24 our current Steelworker workers, we cannot work on a PLA  
25 in Philadelphia because the Steelworkers are not

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1 included as a signatory union to that PLA. To any  
2 PLA.

3 Q. Does current workforce refer to both the  
4 permanent hourly employees and the project to project  
5 hourly employees at PKF?

6 A. It would apply to any PKF employee, any hourly  
7 PKF employee on our payroll whenever the work current  
8 would be current.

9 Everybody we hire is a member of the  
10 Steelworkers Union and would not be able to work on a  
11 project with a PLA on it in Philadelphia.

12 Q. Going back to our discussion of hourly employees,  
13 when you bring on sort of additional hourly employees  
14 for a project, are those employees always members of the  
15 Steelworkers Union?

16 A. Correct.

17 Q. And those employees that are brought on for  
18 specific projects, do they sometimes work for other  
19 contractors?

20 A. I don't know the answer to that question. I  
21 don't know if they have side jobs or do something on the  
22 side on the weekends or something like that, I don't  
23 know.

24 Q. Well, when you add hourly employees for a large  
25 project, are those employees -- do those employees



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1 become permanent employees of PKF?

2 A. They are -- I don't know what you mean by the  
3 term "permanent," but they are employees of PKF, whether  
4 for that job or into the future. We don't hire just for  
5 a specific job, we hire for a need and keep them as  
6 long as we have work for them to do and they're good  
7 workers.

8 Q. Are there times when the additional hourly  
9 employees that are brought on for a large project are  
10 not retained by PKF after the project ends?

11 A. I would -- I don't know the answer to that  
12 question because, again, it depends on what our  
13 available work is at the time that the project ends and  
14 whether the worker, him or herself, were good workers to  
15 keep on our staff, to keep in our employ.

16 Again, we don't hire specifically just for a  
17 job and then send them on their way when the job is  
18 over, unless there's a reason to do so, which would be  
19 lack of work or not a good worker.

20 Q. Okay. Has PKF -- let me start again.

21 During your time at PKF, has the company ever  
22 had to send the worker on its way, as you said, because  
23 of a lack of work after a project is done?

24 A. We've done that all the time.

25 Q. Okay. And is it your understanding that those

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1 workers that are sent on their way may go work for  
2 another Steelworker-affiliated contractor?

3 A. They very well may. I don't know if they do or  
4 not. Some of our folks, who get laid off for lack of  
5 work, sit at home and wait for us to call them back at a  
6 later time.

7 Now, they may find a job in the interim and  
8 don't come back when we call them back. We call that  
9 being on the bench. Some guys and ladies may just stay  
10 home, get their unemployment compensation until we  
11 have -- we are no longer in a lack of work position.

12 Q. Okay. Mr. Isenberg, is it accurate to say that  
13 PKF can perform work on Philadelphia Public Works  
14 projects that are not subject to a project labor  
15 agreement?

16 A. Let's make sure I got this correct. Can you ask  
17 that question again?

18 Can we work on a Philadelphia public project  
19 that is not subject to a PLA?

20 Q. That's correct. That's the question.

21 A. We can and we have.

22 Q. Tell me about the times that you have, that you  
23 recall.

24 A. Well, none since I have been here. I do know  
25 that PKF has done work for the Philadelphia Water

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1 Department in the past. I don't know when.

2 Certainly -- well, certainly not within the last eight  
3 years, probably goes back a little further than that,  
4 but we have done, my understanding is, several PWD jobs  
5 that did not have a PLA on them.

6 Q. Okay. And do you have a sense of timeframe when  
7 those jobs were done?

8 A. I do not.

9 Q. Have you or anyone else at PKF ever asked any  
10 employee of PKF to change their union membership so that  
11 PKF could bid on a City of Philadelphia public project  
12 that requires a PLA?

13 A. I don't know.

14 Q. Well, let me ask the question just directed at  
15 you.

16 Have you ever asked any employee of PKF to  
17 change their union membership?

18 A. Oh, no, because we have an agreement with the  
19 Steelworkers, we would not -- we would -- we couldn't  
20 keep that guy on staff if we asked them to switch to a  
21 different union. He would have to go somewhere else to  
22 work.

23 Q. Okay. Would PKF consider bidding on a City of  
24 Philadelphia Public Works project that requires a PLA if  
25 the United Steelworkers were signatory to the PLA?

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1 A. They would -- PKF, we would certainly consider  
2 bidding on such a job.

3 Q. And, in fact, PKF has done that in the past with  
4 other project owners; is that correct?

5 A. At least New Jersey Department of Transportation,  
6 our Driscoll Bridge project, the Steelworkers were  
7 included and we did work under a PLA for that project.

8 Q. Okay. Does PKF monitor Philadelphia invitations  
9 to bid?

10 A. I would say yes.

11 Q. What factors does PKF consider when determining  
12 whether to bid on a City of Philadelphia Public Works  
13 work?

14 A. Well, I think the factors would all be the same  
15 as any other job, including project labor agreement, the  
16 presence of a project labor agreement.

17 Q. Okay. So those other factors would include the  
18 backlog that we discussed earlier; is that right?

19 A. Correct, available workforce, bonding capacity.  
20 You know, City of Philadelphia, obviously, has its own,  
21 you know, different kind of considerations I would  
22 assume as well, location. Because everything being so  
23 tight, there may not be available space to get around,  
24 depending on what kind of equipment you have to get down  
25 into the city, things along those lines, because of the

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1 congestion of people and buildings and whatnot, may go  
2 into additional, you know, thought processes of whether  
3 we want to bid a job in Philadelphia or not, a public  
4 job, a Public Works job in Philadelphia.

5 Q. Are you familiar with the 15th Street Bridge  
6 project that's discussed in this lawsuit?

7 A. I am not.

8 Q. Okay. Are you aware that the complaint in this  
9 case alleges that PKF wanted to bid on the 15th Street  
10 Bridge project?

11 A. I am not aware of that either. I don't -- yeah,  
12 I don't know if we -- I don't know if we looked at that  
13 15th Street Bridge project or not. Most of the work  
14 that we -- that I have had to review, mainly because of  
15 a PLA, were mostly Philadelphia Water Department jobs,  
16 but I don't know much about the 15th Street Bridge  
17 project.

18 Q. Okay. So are you aware of the Northeast Airport  
19 runway project? That's another project that's the  
20 subject of this case.

21 A. To that extent, that's all I'm aware of, the  
22 airport project that is subject to this case.

23 Q. Okay. Are you aware -- do you know whether PKF  
24 was interested in bidding on this project?

25 A. I do not.

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1 Q. Do you know if PKF did bid on the project?

2 A. We did not.

3 Q. Are you aware that the PLA requirement was  
4 removed for that project?

5 A. I am aware of that, yes.

6 Q. Who at PKF could speak to the company's interest  
7 in bidding on those two projects, the 15th Street and  
8 runway projects?

9 A. Probably our chief estimator, but I don't know.

10 Q. Are you aware of Philadelphia's prequalification  
11 process for Public Works projects?

12 A. Only to the extent that I know they have one.  
13 I'm not aware of the process or what's required for the  
14 prequal.

15 Q. Okay. And who at PKF would be aware -- would be  
16 aware of that?

17 A. Either our chief estimator, vice president, Mitch  
18 Baland, or our -- what is his title? Chief financial  
19 manager, his name is Don Michell, M-I-C-H-E-L-L. Don  
20 handles a lot of our prequal applications and things  
21 along those lines, does the work. Because a lot of  
22 times they ask for financial -- you know, how you are  
23 financially and things like that. So Don handles a lot  
24 of that.

25 But, again, outside of knowing they have a

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1 prequal, I'm not familiar with what's required in a  
2 prequal.

3 Q. Okay. Is it fair to say that when PKF is  
4 interested in bidding on a project, and the project  
5 requires prequalification, that PKF submits a  
6 prequalification for the project?

7 A. I think it's fair to assume that, yes, if it's  
8 required.

9 Q. Has PKF ever refrained from bidding on a City of  
10 Philadelphia Public Works project for a reason other  
11 than a PLA requirement?

12 A. Well, I guess my question, for jobs that have a  
13 PLA or jobs that don't have a PLA?

14 Q. Let's talk about jobs that don't have a PLA.

15 A. Okay.

16 Q. Has PKF ever refrained from bidding on a  
17 Philadelphia job for some other reason?

18 A. Without having first-hand knowledge of that, I  
19 would have to assume yes.

20 Q. And who would have firsthand knowledge of that at  
21 PKF?

22 A. Our chief estimator, Mitch Baland. With that,  
23 having said that, I have to give one caveat when I  
24 mention Mr. Baland.

25 Mitch has been in the role as chief estimator

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1 for approximately a year, year and a half. Our previous  
2 executive vice president, chief estimator, is no longer  
3 with PKF, and so anything prior to the last year, Mitch  
4 would not really have the ability to comment on what he  
5 has passed on or what he has not passed on, and our  
6 prior gentleman is no longer with us.

7 Q. Okay. What was the name of the gentleman who's  
8 no longer with PKF?

9 A. Craig Coleman. But I'm sure Mitch has looked at  
10 some in the last year as well. I just wanted to make  
11 sure -- he won't have the 30-year history of jobs,  
12 that's all, but I'm sure he's looked at some as well.

13 Q. Okay. Thanks. I appreciate that.

14 Has PKF refrained from submitting bids on  
15 Philadelphia Public Works projects that are subject to a  
16 project labor agreement?

17 A. Yes.

18 Q. Which projects are you aware of that PKF  
19 refrained from submitting a bid on because of the  
20 existence of the PLA requirement?

21 A. I can't tell you exactly what jobs they were.  
22 I -- when Craig was still working here, if he saw a, for  
23 the most part, a PWD job that had a PLA, he would send  
24 it to me with a -- well, some kind of comment in terms  
25 of it has a PLA, guess we can't bid this one, but double



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1 check and make sure the Steelworkers are or are not  
2 included.

3 And they always came back as not included,  
4 so -- and I know we didn't bid them, so I would assume  
5 we didn't bid them because of the PLA. But I don't know  
6 what jobs they are because it would just be an email  
7 with a bid advertisement attached to it and it would,  
8 you know, double check this but if we're not included,  
9 we can't bid, type of comment.

10 Q. Okay. So if a City of Philadelphia PLA bid did  
11 include the Steelworkers, that would not be a bar to PKF  
12 potentially bidding on that contract; is that right?

13 A. Correct.

14 MS. FURST: I think that is all I  
15 have. I think other counsel may have  
16 questions, but thank you very much,  
17 Mr. Isenberg.

18 THE WITNESS: You're more than  
19 welcome.

20 MR. WEINERT: I actually don't have  
21 any questions. Thanks.

22 MR. ZIMOLONG: No questions. Thank  
23 you.

24 MS. FURST: All right. Thanks,  
25 everyone. See you this afternoon.

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2 (Deposition concluded at 10:47

3 a.m.)

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and  
evidence noted are contained fully and accurately in the  
stenographic notes taken by me in the foregoing matter,  
and that this is a correct transcript of the same.

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Court Reporter - Notary Public

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# Exhibit P

Joseph Canuso  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -  
ROAD-CON, INC., NESHAMINY : CIVIL ACTION  
CONSTRUCTORS, INC., LOFTUS : NO. 2:19-cv-01667-JS  
CONSTRUCTION, INC., :  
PKF-MARK III, and SCOTT A. :  
LACAVA :  
Plaintiffs, :  
-V- :  
CITY OF PHILADELPHIA and :  
JAMES KENNEY, IN HIS :  
OFFICIAL CAPACITY AS MAYOR :  
OF THE CITY OF PHILADELPHIA :  
Defendants. :

- - -  
Wednesday, September 30, 2020  
- - -

ORAL ZOOM DEPOSITION OF JOSEPH  
CANUSO, taken pursuant to the Subpoena, held remotely  
and by Zoom videoconference in Pennsylvania, commencing  
at 1:30 p.m., before SHARON RICCI, RMR, CRR - Notary  
Public there being present.

Joseph Canuso  
September 30, 2020

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1 A P P E A R A N C E S:

2  
3 ZIMOLONG, LLC

4 BY: WALTER S. ZIMOLONG, ESQUIRE  
5 P.O. Box 552  
6 Villanova, PA 19085  
7 (215)665-0842  
8 wally@zimolonglaw.com  
9 Representing the Plaintiffs

10 KANG, HAGGERTY & FETBROYT, LLC

11 BY: MICHAEL SCOTT WEINERT, ESQUIRE  
12 123 S. Broad Street, Suite 1670  
13 Philadelphia, PA 19109  
14 (215)525-5850  
15 mweinert@khflaw.com  
16 Representing the Intervenors

17 CITY OF PHILADELPHIA LAW DEPARTMENT

18 BY: LYDIA FURST, ESQUIRE  
19 AMY KIRBY, ESQUIRE  
20 1515 Arch Street, 15th Floor  
21 Philadelphia, PA 19102  
22 (215)683-3573  
23 lydia.furst@phila.gov  
24 amy.kirby@phila.gov  
25 Representing the Defendants

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## I N D E X

WITNESS	PAGE
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JOSEPH CANUSO (Witness sworn)	5
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EXAMINATION BY:	
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MS. KIRBY:	5
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- - -

## E X H I B I T S

NUMBER	DESCRIPTION	PAGE
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(None presented)		
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- - -

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1 COURT REPORTER: Counsel, I will  
2 read a stipulation into the record. Please  
3 bear with me, as it is long.

4 It is hereby stipulated and agreed  
5 by and between counsel for all parties present  
6 that pursuant to 231 Pa. Code 4002 this  
7 deposition is being conducted by Zoom  
8 conference, that the court reporter, all  
9 counsel, and the witness are all in separate  
10 remote locations and participating via Zoom  
11 conference meeting under the control of  
12 Strehlow & Associates Court Reporting Service,  
13 that the officer administering the oath to the  
14 witness need not be in the place of the  
15 deposition and the witness shall be sworn in  
16 remotely by the court reporter after  
17 confirming the witness's identity, that this  
18 Zoom conference will not be recorded unless  
19 previously noticed as a videotaped deposition  
20 and that any recording without the express  
21 written consent of all parties shall be  
22 considered unauthorized, in violation of law,  
23 and shall not be used for any purpose in this  
24 litigation or otherwise.

25 It is further stipulated that

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1 exhibits may be marked by the attorney  
2 presenting the exhibit to the witness, and  
3 that a copy of any exhibit presented to a  
4 witness shall be emailed to or otherwise in  
5 possession of all counsel prior to any  
6 questioning of a witness regarding the exhibit  
7 in question. All parties shall bear their own  
8 costs in the conduct of this deposition by  
9 Zoom conference.

10 So stipulated, counsel?

11 MR. ZIMOLONG: Wally Zimolong for  
12 the plaintiff. So stipulated.

13 MS. KIRBY: Amy Kirby for the City  
14 of Philadelphia. So stipulated.

15 MR. WEINERT: Michael Weinert. So  
16 stipulated.

17 MR. ZIMOLONG: And we would just  
18 like to reserve the right for the witness to  
19 read and sign.

20 ...JOSEPH CANUSO, after having been  
21 first duly sworn, was examined and testified  
22 as follows:

23 - - -

24 DIRECT EXAMINATION

25 - - -

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1 BY MS. KIRBY:

2 Q. Good afternoon, Mr. Canuso. My name is Amy Kirby  
3 and I'm an attorney for the City of Philadelphia and  
4 I'll be taking your deposition this afternoon.

5 Have you ever been disposed -- deposed before?

6 A. Disposed and deposed, yes.

7 Q. Not in relation to -- well, I guess, how recently  
8 have you been deposed?

9 A. It's been years. It's been -- not recently.

10 Yeah.

11 Q. All right. I'll go over just a few of the ground  
12 rules which also may change just because we're on Zoom,  
13 but I'm sure you're familiar with them.

14 So, of course, I'll ask questions. I tend to  
15 speak very quickly, so you can tell me to slow down if  
16 you can't understand anything I'm saying. But, please,  
17 I ask that you don't answer, of course, until I finish  
18 the question. I'll do the same. I'll make sure you  
19 finish the question before I start another one. It just  
20 helps the court reporter take everything down.

21 Make sure, when you answer a question, you  
22 actually verbally answer. No nods of the head or  
23 shakes of the head because she won't be able to take  
24 that down.

25 A. Okay.

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1 Q. If you need a break, feel free. I just ask that  
2 you don't take a break if there's a question pending.  
3 So make sure you answer any question that's pending  
4 before you ask for a break.

5 Is there any reason that you can't answer  
6 truthfully this afternoon?

7 A. No.

8 Q. Okay. So let's start with a little bit of your  
9 background.

10 What is your current position?

11 A. I am chief executive officer of Neshaminy  
12 Constructors.

13 Q. And how long have you been the chief executive  
14 officer of Neshaminy?

15 A. Seventeen years.

16 Q. And prior to that?

17 A. Prior to that, I practiced corporate law.

18 Q. Okay. Are you currently a lawyer now or no?

19 A. I'm not practicing, but I am licensed, yeah.

20 Q. Okay. And as the CEO of Neshaminy, what are your  
21 duties generally?

22 A. I oversee operations, administration, finance,  
23 business development.

24 Q. And do you have any role in choosing the projects  
25 that Neshaminy bids on?



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1 A. I do.

2 Q. Okay. Is it a direct role or is it more of a  
3 supervisory role?

4 A. I am not the lead estimator, but I am involved in  
5 decisions to bid or not bid projects.

6 Q. Okay. Who is the lead estimator?

7 A. My brother, Tony.

8 Q. Okay. Same last name?

9 A. Yes.

10 Q. Tony Canuso, okay.

11 A. Uh-huh.

12 Q. So do you have final authority to determine what  
13 Neshaminy bids on?

14 A. We currently make that decision.

15 Q. You currently make that decision or you and your  
16 brother?

17 A. Correct. The latter, yes.

18 Q. And tell me a little bit about Neshaminy, the  
19 business.

20 Where are you located?

21 A. We're up in Feasterville, Bucks County. We've  
22 been in operation since 1962, founded by my father. And  
23 we are, generally speaking, heavy and highway  
24 contractor, primarily Public Works projects with, to  
25 public agencies.

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1 Q. And are you a member of the Pennsylvania Heavy  
2 and Highway Contractors Bargaining Association?

3 A. Neshaminy Constructors is, yes.

4 Q. And how long has Neshaminy Constructors been a  
5 member of that association?

6 A. Prior to my time, I believe it was mid 80's that  
7 we --

8 Q. Okay. Since the mid 80's, has there been any  
9 time that you haven't been affiliated with that  
10 association?

11 A. I do not believe so.

12 Q. Okay. And you just said that Neshaminy does  
13 generally heavy and highway.

14 Can you just tell me what kind of work that  
15 includes?

16 A. Bridge construction and rake(PH) construction, a  
17 lot of transit work, subway stations, elevated Regional  
18 Rail stations. That's generally the thrust of it.

19 Q. Okay. And I think you may have answered this  
20 already, but how much of your business, Neshaminy's  
21 business, is Public Works projects?

22 A. Nearly exclusively.

23 Q. Okay. What's the other little piece?

24 A. If there's a private developer, for example, that  
25 own a bridge that needs to be renovated or something

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1     like that, you know, that's generally what the private  
2     sector -- that's the private piece typically.

3     Q.        Okay.

4     A.        Yeah.

5     Q.        And this may be a hard question to answer, but  
6     generally what's the contract amount for the projects  
7     that Neshaminy bids on and completes?

8     A.        For us, it ranges between usually a million, a  
9     couple million, all the way up to 30-some million.

10    Q.        Okay. So you're not doing a heavy load of  
11    smaller projects. Most of your projects, the threshold  
12    is around a million dollars?

13    A.        Yeah, just by the way they come out. There's  
14    no -- yeah.

15    Q.        Okay. And do you work as both the prime  
16    contractor and a subcontractor?

17    A.        Primarily as a prime contractor. I can't recall  
18    a recent situation on a Public Works contract where we  
19    were a subcontractor.

20    Q.        And where does Neshaminy Contractors do most of  
21    its work?

22    A.        Primarily the five-county region. We will be in  
23    Pennsylvania, we have been in New Jersey, not so much  
24    recently, and we have ventured north and west of the  
25    five-county area for specific projects.

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1 Q. Okay. In the state -- so outside Pennsylvania,  
2 New Jersey, do you work in any other states?

3 A. No.

4 Q. Okay. And working -- do you do work in the city  
5 of Philadelphia also?

6 A. Yes.

7 Q. Okay. And outside of the city of Philadelphia,  
8 has Neshaminy ever signed on to a project labor  
9 agreement?

10 A. Not during my tenure. I can't speak to before me  
11 so -- yeah. Actually, that's not entirely true. We  
12 signed on to one actually in New Jersey. I'm going to  
13 say it was 2009. And it came out with a PLA on it, we  
14 made a request to have the Steelworkers added. The  
15 request was granted, so we bid on the project.

16 Q. Okay. Were you awarded that contract?

17 A. Yes, we were.

18 Q. Okay. And so you completed it with the PLA on  
19 the project?

20 A. Yes, we did, with the Steelworkers.

21 Q. Sure. Does Neshaminy monitor invitations to bid  
22 in Philadelphia?

23 A. Yes.

24 Q. Okay. And what factors does Neshaminy consider  
25 when determining whether they're going to submit a bid

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1 on a City of Philadelphia Public Works project?

2 A. Where the owner is the City, is that your  
3 question?

4 Q. Yes. Correct.

5 A. Okay. So there are some unique factors relating  
6 to the City projects and there are some standard factors  
7 that we apply to all projects in determining whether to  
8 bid them.

9 The unique factors are, obviously, the City, as  
10 far as I can recall, have a project specific  
11 prequalification process. You're not -- you don't have  
12 standing prequalification. You have to prequalify for  
13 each job. So that, in and of itself, is a  
14 time-consuming process.

15 And that, in some cases, will affect our  
16 interest in the project. If it's up our alley, in our  
17 wheelhouse, or if it's something more on the fringe.  
18 The City also has the LBE requirement. We do not have a  
19 current physical bricks and mortars presence in the  
20 city, so we have that five percent disadvantage going  
21 in.

22 So those are the two unique aspects to it. The  
23 aspects that are applicable to any project, obviously,  
24 the -- whether there's a PLA on it is a factor. The  
25 duration of the project, the complexity of the project,

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1 the -- you know, our current situation with whether  
2 there are other more attractive projects out there, what  
3 our money capacity is based on our existing workload,  
4 what resources we have available to perform the project,  
5 financial considerations, if there's some reason to  
6 think that payment will be delayed because the way the  
7 project is laid out, you know, how the cash flow on a  
8 project will be. Typical stuff.

9 Q. Okay. So when we're talking about the unique  
10 factors that are specific to the City of Philadelphia,  
11 which essentially is the project specific  
12 prequalifications and the LBE requirements?

13 A. Uh-huh.

14 Q. Do those -- how do those factor in to whether  
15 you're going to bid on a project?

16 And let me take them separately. So let's  
17 start with LBE requirements.

18 How do the LBE requirements factor into whether  
19 you will bid on a City of Philadelphia Public Works  
20 project?

21 A. Well, because we have a five percent disadvantage  
22 out of the box, it would typically need to be a project  
23 that is in our wheelhouse that we feel for a variety of  
24 reasons, given access considerations or what -- for  
25 example, if it's a bridge, if the bridge is over a

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1 utility that we know such as SEPTA, versus one that we  
2 don't have as much success with -- you know, we have to  
3 have a level of confidence that we can overcome that  
4 five percent disadvantage. Because margins are very  
5 thin in our industry right now, so five percent, you  
6 know, can mean a hell of a lot.

7 Q. Okay. And I'll ask kind of the same question for  
8 the prequalification process.

9 How does that specifically factor into whether  
10 you bid on a City project?

11 A. Well, it costs money and time to bid a project.  
12 And depending on when the project is advertised, when it  
13 comes to our attention, what other resources we have or  
14 what other constraints on our resources we have with  
15 other jobs for bidding. If we don't believe we're going  
16 to get an answer from the City until it's too close to  
17 the bid, you know, it just may be a decision as to  
18 whether we want to go with the resources in a fashion  
19 knowing that we may not get prequalified.

20 Q. Okay. How many projects, if you can answer,  
21 generally, let's say in the last five years, have you  
22 bid on and been awarded for the City of Philadelphia?

23 A. Last five years, I would say zero.

24 Q. Zero. So let me break that up then.

25 Have you bid on any projects in the last five

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1 years with the City of Philadelphia?

2 A. I don't think so.

3 Q. So, obviously, we don't need to ask the second  
4 part of the question.

5 A. That's correct.

6 Q. Okay. Let's go even further then.

7 How about the last ten years? I mean, what's  
8 the last project you can remember bidding on for the  
9 City?

10 A. Yeah. We bid on a -- something out on -- it's  
11 near Venice Island. It's on one of those islands in the  
12 Schuylkill, there was some sort of a supportive  
13 excavation type of renovation. I'm going to guess it  
14 was eight years ago. And we were unsuccessful.

15 Q. Okay.

16 A. I think we also bid on the City Hall renovation,  
17 which was an exterior renovation. I think it went for  
18 \$10 million. That was in the last ten years.

19 Q. Okay. Is it fair to assume that neither of those  
20 projects had PLAs?

21 A. Yeah, it's fair to assume that, I believe. One  
22 of them, I think, we might have been as a joint venture  
23 partner, so that one I'm not sure because our  
24 partner -- we might have -- we actually might have just  
25 been providing estimating services for that party.



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1 I'm just -- this is very distant past. And  
2 that party was a Philadelphia-based building trades  
3 contractor.

4 Q. Okay. What was the name of that party?

5 A. Buckley and Company.

6 Q. Buckley?

7 A. Yeah.

8 Q. Okay.

9 A. So I think they were the bidder and we were just  
10 helping the estimate.

11 Q. Okay.

12 A. That's all I remember. So that might have had a  
13 PLA on it. I don't remember.

14 Q. Okay. And do you recall if that was the Venice  
15 Island project or the City Hall rehab project?

16 A. The City Hall rehab project. And Buckley was not  
17 successful either.

18 The last one we got was in the first decade of  
19 the century. It was a Germantown Avenue bridge over in  
20 Wissahickon that we bid as a general, we were awarded,  
21 and it did not have a PLA on it.

22 Q. Okay. And you said you haven't bid on any  
23 contracts in the last five years. Obviously, you told  
24 me the general considerations.

25 Is there anything else that has made you not

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1 bid or anything specifically that's made you not bid on  
2 these projects, or did we cover it all?

3 A. Well, the 15th Street Bridge is the subject of  
4 this litigation, which our kind of job, we would have  
5 bid that if it didn't have a PLA.

6 Q. Okay. So was that the only reason you didn't bid  
7 on the 15th Street Bridge project?

8 A. Yep.

9 Q. Okay. Did you submit any information for  
10 prequalification for that project?

11 A. Nope, because it had a PLA on it.

12 Q. Okay. Are you aware that the PLA was removed  
13 from that project?

14 A. Too late in the game. We had our resources  
15 committed to other places. And by the time it was  
16 removed, we would have never been able to start and  
17 prepare an intelligent estimate.

18 Q. And just to be clear for the record, when you say  
19 "resources were committed," you had other jobs that you  
20 were going to complete instead of that one?

21 A. We had other jobs we were bidding on, yeah.

22 Q. Okay. Fair enough. Do you ever bid on more than  
23 one job at the same time?

24 A. Yeah.

25 Q. Okay.

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1 A. Sure.

2 Q. The other project that's the subject of this  
3 litigation is the Northeast Airport runway project.

4 Are you familiar with that project?

5 A. I'm just familiar with it because of this  
6 litigation.

7 Q. Okay. That wasn't a project that would have been  
8 in Neshaminy's wheelhouse?

9 A. No, it was not.

10 Q. Okay. So it wouldn't be something that you would  
11 bid on?

12 A. That is correct.

13 Q. And why was that something that wasn't  
14 necessarily an interest to you in bidding?

15 A. We usually don't spend a lot of time looking at  
16 airport projects because of the strong building trades  
17 union presence down there and they're just -- it's just  
18 a headache.

19 Q. Okay. That's the only reason?

20 A. Well, I don't remember what the specifics of that  
21 project were, but there's a lot of flatwork out there,  
22 as opposed to structure work, and it's paving  
23 and -- (Inaudible.)

24 COURT REPORTER: Sir, you trailed  
25 off there. Can you repeat that?

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1 THE WITNESS: I said our forte is  
2 structural work such as bridges, and typically  
3 the work down at the airport is either  
4 building work, which we don't do, unless it's  
5 incidental to a heavy structural project; or  
6 flatwork, which is like runways that are on  
7 grade, taxiways, and things like that which we  
8 cannot be competitive on. We do not have a  
9 paving force.

10 BY MS. KIRBY:

11 Q. Has Neshaminy -- I think you already answered  
12 this question too, but I'll ask it just to clarify.

13 Generally, has Neshaminy ever refrained from  
14 bidding on a City Public Works project for a reason  
15 other than a PLA?

16 A. I don't recall.

17 Q. Okay. Would the runway project be one of those  
18 projects, an example of that? So you didn't bid on it  
19 for a reason other than the PLA, correct?

20 A. I would say the two reasons were the PLA and it  
21 wasn't attractive to us. So you can, you know,  
22 speculate as to which was more proximate, but we  
23 declined to bid a number of projects that we tracked or  
24 that come to our attention simply because we don't think  
25 we could be competitive at it or for the other factors

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1 that I described.

2 Q. Okay. You're answering all my questions very  
3 quickly with your -- you have very comprehensive  
4 answers, so we'll go through very quickly on this.

5 A. Good.

6 Q. Give me one second.

7 (Pause)

8 Do you have any idea how many projects you  
9 have refrained from bidding on in, say, the last  
10 five years with the City because there was a PLA on  
11 them?

12 A. I don't.

13 Q. Okay. I mean -- I'm not trying to make this a  
14 memory test.

15 Do you think it's like one, do you think it's a  
16 hundred? I mean, just a general ballpark.

17 A. Well, I can answer it this way, we generally will  
18 just toss anything that comes out with a PLA.

19 Q. Okay. But you don't necessarily have a -- can't  
20 quantify how many projects that come out with a PLA?

21 A. I can't quantify. If I think there's a chance  
22 that the Steelworkers will be added, that's a different  
23 story, by we have not had that experience with the  
24 City.

25 Q. Okay. And to kind of just discuss that, have you

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1 ever looked at a project that has a PLA and it looks  
2 like something that would otherwise be attractive to  
3 Neshaminy and discussed the idea of the Steelworkers  
4 being included with someone from the City?

5 A. Other than this 15th Street project where we, you  
6 know, obviously, had an interest in bidding it and, you  
7 know, obviously, money was involved for a reason, I  
8 don't recall having a discussion directly with someone  
9 from the City about it.

10 Q. Adding the Steelworkers. Okay.

11 A. About adding the Steelworkers. I've requested  
12 multiple other agencies. I don't recall if we did with  
13 the City.

14 Q. Okay. Have you ever bid on a City project that  
15 has -- requires a PLA?

16 A. I don't believe so, no. Not during my tenure.

17 Q. Okay. And why not?

18 A. By definition, you're in breach of your  
19 collective-bargaining agreement.

20 Q. Okay. Let's move on and talk a little bit about  
21 Neshaminy and your workforce.

22 So how many full-time employees does Neshaminy  
23 have?

24 A. Let's say 10 to 12.

25 Q. Okay. And are those union employees or non-union

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1 employees?

2 A. Okay. Maybe I didn't answer that question  
3 correctly. I'm talking about office and supervisory, is  
4 about 10 to 12. And two of them are building trades  
5 union employees, but they're supervisors. They do not  
6 work with the tools, they're just superintendents, and  
7 there's not a problem with their collective-bargaining  
8 agreement to have them be superintendents.

9 So that's our -- I'll call it our  
10 non-project-related workforce. They're our employees.

11 Q. Okay. And other than the two employees, who are  
12 members of the building trades, the other eight are not  
13 union members?

14 A. That is correct.

15 Q. Okay. And how did it happen that you hired two  
16 supervisory employees that are members of the building  
17 trades -- why didn't you go with the Steelworkers, I  
18 guess?

19 A. Well, with supervision you're not constrained by  
20 who you hire. You can hire somebody salary, you can  
21 hire a Steelworker and you can hire a building  
22 tradesperson, so we just go for the talent that we felt  
23 was best for our needs.

24 Q. Okay. And other than that -- so you have the  
25 ten -- I'm going to call them core employees just so

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1 it's easy for me to understand.

2 So you have those ten core employees. Who else  
3 does Neshaminy employ?

4 MR. ZIMOLONG: Amy, just to object.

5 We don't agree -- obviously, you're using the  
6 term "core employees."

7 We don't necessarily agree that  
8 that -- to the extent that that's a term of  
9 art or something, that's fine for purposes of  
10 questioning. We don't agree that they're  
11 considered core employees.

12 We consider them management or  
13 supervisory employees.

14 MS. KIRBY: Sure. We can call them  
15 management too. That's fine.

16 BY MS. KIRBY:

17 Q. So other than these ten management employees, who  
18 else is on your payroll at Neshaminy?

19 A. Those ten are not covered by a  
20 collective-bargaining agreement necessarily because of  
21 what they do, if that makes sense. The other ones are  
22 exclusively United Steelworkers employees, and we have  
23 them when we need them.

24 Q. When you bid on jobs, I'm assuming?

25 A. When we have work for them, yes.



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1 Q. Okay. Who writes their paychecks? Does  
2 Neshaminy or does Steelworkers?

3 A. Neshaminy.

4 Q. Okay. And how many employees do you generally  
5 have?

6 A. Depends on the workload. If we're slow, very  
7 few. If we're hot and heavy, we could be up to a  
8 hundred.

9 Q. Okay. How many do you have right now?

10 A. I'm guessing -- I don't know. You know, probably  
11 10 to 20.

12 Q. Okay. And do any of those employees generally  
13 work for you 365, or very close to that, around the  
14 year, or do most of them get laid off at some point?

15 A. Again, I don't have the payroll records in front  
16 of me, but nobody is insulated from layoff that is  
17 United Steelworkers.

18 You know, you have different people with  
19 different levels of talent and, you know, you will try  
20 to keep those going that you don't want to lose to  
21 another competitor. But if there's no work, there's no  
22 work. So it's really situation dependent. If we can  
23 keep a continuity of work flow, which is more  
24 challenging in the winter months, then they continue to  
25 work.

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1 Q. Okay. And when they're not working for  
2 Neshaminy, are they free to go work for another  
3 contractor?

4 A. We do not constrain them.

5 Q. Okay. So does someone else constrain them, to  
6 your knowledge?

7 A. I would have -- you know, I don't really know  
8 what happens as far as if they -- I mean, generally the  
9 way the collective-bargaining agreement works is they go  
10 back to the hiring hall and say Neshaminy just laid me  
11 off, and then the other -- the union management will  
12 attempt to place them with one of the other members of  
13 the PAHHCBA.

14 Okay. Now, whether they decide to go switch  
15 unions, work in a union, or any of that stuff, is up to  
16 them. That's not something I can tell them or ask them  
17 to do.

18 Q. Sure. Fair enough. But they're not constrained  
19 to work only for Neshaminy, they can work for another  
20 Steelworker-affiliated contractor if they're laid off  
21 from a job with you?

22 A. Yeah. I mean, they could quit tomorrow too if  
23 they don't like the color of my tie. So...

24 Q. Okay. Fair enough. And I understand in the  
25 declaration it says Neshaminy has chosen the United

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1 Steelworkers as their collective-bargaining  
2 representative.

3 Do you know what that means, that they've  
4 chosen them?

5 A. Well, again, this is ancient history, but  
6 I -- speaking with my father, it's my understanding back  
7 in the 80's that he made a decision of signing with the  
8 Steelworkers, as opposed to having an election and, you  
9 know, that kind of thing.

10 Q. Okay. And forgive my ignorance because you know  
11 more about this than I do.

12 What do you mean by sign with the Steelworkers  
13 versus an election?

14 So did Neshaminy say they only want to be  
15 affiliated with workers from the Steelworkers or  
16 what -- you know, I just want to understand a little bit  
17 more about the mechanism.

18 A. I'm not a labor attorney and, you know, my  
19 understanding is there's two ways to become in signed  
20 relations with a union.

21 The one is if the workers get together and  
22 decide they want to unionize and call an election, and  
23 that's more of a worker driven decision and management  
24 can go along with it or resist it. It's up to them. Or  
25 management can decide that, for whatever reason, that

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1 they want to sign with that union.

2 Q. Okay.

3 A. And I believe in the case of Neshaminy, that  
4 was -- the latter is the way we came into signing  
5 relations with the Steelworkers in the 80's.

6 Q. Okay. And am I correct in understanding that the  
7 signing of this agreement is for a term, right? Is it  
8 around three years usually?

9 A. Yeah. Uh-huh. Yes.

10 Q. Okay. So after those three years, could you,  
11 Neshaminy, decide you don't want to be affiliated with  
12 the Steelworkers anymore?

13 A. The -- there is a mechanism prior to the  
14 beginning of negotiations, near the expiration of each  
15 three-year term, for a contractor to opt out of  
16 collective bargaining with the association.

17 At that point -- and, again, I am not an expert  
18 at this -- the contractor could choose to either  
19 negotiate separately with the union or attempt to, you  
20 know, leave the union or leave -- you know, end the  
21 signed relations.

22 Q. Okay. So is it fair to say that if you said  
23 we've had it with the Steelworkers, we -- that you could  
24 decide to either go, A, non-union and become a non-union  
25 shop, or B, pick another union to affiliate with?

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1 A. That is technically correct. As a practical  
2 matter, there are huge impediments to doing that.

3 Q. Okay. Tell me a little bit about those  
4 impediments.

5 A. Well, I guess the one that's first and foremost  
6 and, you know, you can't pick up a newspaper in a  
7 recession environment without seeing it, but we have a  
8 multi-employer defined benefit plan and when you have  
9 withdraw of -- when you have an underfunded pension and  
10 you leave the union, then you get a huge bill for your  
11 share of the unfunded withdraw liability, and  
12 that's -- that can be staggering in a down market.

13 Q. Okay. Anything else?

14 A. Well, you have your workforce. You'd have to  
15 start a new workforce. I mean, you know, we -- you  
16 know, even though people get laid off and get rehired,  
17 you generally try to maintain continuity with the same  
18 group, particularly with the key folks. Beyond that,  
19 I'd have to check with counsel.

20 Q. Okay. And I'll pull it up if we need to, but I  
21 can read generally what the declaration that you drafted  
22 says regarding -- it says: "Neshaminy maintains a  
23 collective-bargaining agreement with United Steelworkers  
24 so, therefore, cannot perform work on any City of  
25 Philadelphia Public Works project that is subject to a

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1 project labor agreement with the current workforce."

2 I just want to understand what "current  
3 workforce" means.

4 A. My Steelworkers, Steelworker workforce, yeah.

5 Q. So it means those non-ten management employees,  
6 those other guys that you, or women who you hire to work  
7 on your projects?

8 A. Yeah, those that are covered by the  
9 collective-bargaining agreement that are working with  
10 the tools.

11 Q. Okay. And those are technically kind of -- is it  
12 fair to say they're temporary employees or would you  
13 call them permanent employees?

14 A. I would prefer not to characterize it. I think  
15 I've been specific in how it typically works.

16 Q. Fair enough.

17 A. If that's okay.

18 Q. Sure. Could Neshaminy perform work on  
19 Philadelphia Public Works projects that are not subject  
20 to a PLA with their current workforce?

21 A. Yes.

22 Q. Okay. Have you ever asked any Neshaminy employee  
23 to change their union affiliation so that you could bid  
24 on a Philadelphia Public Works project?

25 A. There would be problems with me doing that. No.

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1 The answer is no.

2 Q. Okay. Generally, what are the problems with  
3 that?

4 A. Well, they have representatives. And if  
5 management attempts to negotiate any bargained rights or  
6 responsibilities directly with a member, there are  
7 repercussions.

8 Q. Okay. So you don't anticipate asking anyone to  
9 move from the Steelworkers to another union so you could  
10 bid on City projects, correct?

11 A. I can't. They've chosen to be Steelworkers.

12 Q. Okay. Would you bid on a City of Philadelphia  
13 Public Works project that required a PLA if the  
14 Steelworkers were included in the PLA?

15 A. Yes.

16 Q. Okay.

17 A. It would have to be our kind of project.

18 Q. Sure. All those other factors that we discussed  
19 before?

20 A. All those other factors, yes.

21 Q. Okay.

22 MS. KIRBY: I think I'm just about  
23 done. Can we take like two minutes, just let  
24 me look over my notes real quick?

25 It's 2:02. At 2:05 can we come

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1 back?

2 MR. ZIMOLONG: You want to sign  
3 off?

4 MS. KIRBY: I'm just going to mute  
5 myself. I'll still be here. You guys are  
6 fine.

7 MR. ZIMOLONG: Yeah, we'll take a  
8 three-minute break.

9 - - -

10 (Whereupon, a brief recess was  
11 taken.)

12 - - -

13 MS. KIRBY: All right. I think  
14 we're ready. I just have one or two, maybe,  
15 more questions.

16 BY MS. KIRBY:

17 Q. Do you recall bidding on the Pulaski Park Pier  
18 wall renovation project in the City of Philadelphia?

19 And I believe it was in 2018, so it was  
20 relatively recently.

21 A. I don't recall it by that name. I recall bidding  
22 on a bunch of jobs, but I didn't recall that it was a  
23 City of Philadelphia job.

24 Q. Okay. And you don't recall specifically bidding  
25 on anything in 2018?



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1 A. I don't recall, no.

2 MS. KIRBY: Okay. Fair enough. I  
3 don't have any further questions. I'm not  
4 sure if your attorney has any or if  
5 Mr. Weinert has any.

6 MR. WEINERT: I have no questions.

7 MR. ZIMOLONG: I don't have any  
8 questions. Thank you.

9 MS. KIRBY: Thank you for your  
10 time.

11 THE WITNESS: Okay.

12 - - -

13 (Deposition concluded at 2:06 p.m.)

14 - - -

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C E R T I F I C A T I O N

I, hereby certify that the proceedings and  
evidence noted are contained fully and accurately in the  
stenographic notes taken by me in the foregoing matter,  
and that this is a correct transcript of the same.

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Court Reporter - Notary Public

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# Exhibit Q



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROAD-CON, INC, et al.,	:	
<i>Plaintiffs,</i>	:	Civil No: 2:19-cv-01667
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	
<i>Defendants.</i>	:	

I, Jonathan Janiszewski, make this declaration and aver as follows:

1. I am the Deputy Commissioner for the City of Philadelphia (the “City”) Procurement Department.
2. In my capacity as Deputy Commissioner, I am responsible for overseeing the policies and operations of the Procurement Department.
3. Section 8-200 of the Home Rule Charter (the “Charter”) provides that all contracts, other than those that fall within certain noted exceptions, “shall be awarded to the lowest responsible bidder”. Thus, the Procurement Department understands that, as a general matter, all contracts must be awarded to the lowest responsible bidder.
4. The Procurement Department cannot modify this Charter provision providing for award to the lowest responsible bidder, instead that requirement can only be modified if the Charter, through legislation, authorizes such modification.
5. The Procurement Department interprets Philadelphia Code Section 17-109 as such an exception to the lowest responsible bidder requirement, authorized by Section 8-200 of the Charter.
6. This exception allows the Procurement Department to award a contract to a bidder, who is not otherwise the lowest bidder, if that bidder satisfies the Local Bidding Entity requirements of Section 17-109 of the Philadelphia Code.

7. If a contractor meets those requirements, it receives a “bid preference” that, for purposes of establishing a bidder’s price, reduces its bid price by 5% for bids over one million dollars. Thus, this can allow a higher priced bidder to be deemed the low bidder if application of the bid preference effectively makes the bidder receiving the preference the low bid.
8. In contrast, the Procurement Department does not interpret the City’s use of a Project Labor Agreement (“PLA”) on a project as a “bid preference”. Instead, a bidder’s ability to comply with requirements in a PLA is regarded as a matter of contractor responsibility. It does not affect the bid price.
9. As a result, the Procurement Department does not regard the use of PLAs which are contemplated by the applicable Executive Order as requiring an ordinance as an exception to the Charter requirement.

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*/s/ Jonathan R. Janiszewski*

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Jonathan R. Janiszewski  
Deputy Commissioner  
City of Philadelphia Procurement  
Department